UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION

MASTER FILE NO.
05 Civ. 8626 (GEL)

JURY TRIAL DEMANDED

SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

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RH Capital Associates LLC, Pacific Investment Management Company LLC and PIMCO Funds: Pacific Investment Management Series – PIMCO High Yield Fund bring this federal securities law class action on behalf of themselves and all other persons and entities, other than Defendants and their affiliates as specified in ¶ 81 below, who purchased or acquired publicly traded shares, bonds or notes of Refco Inc., its predecessors and affiliates (including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC, and Refco Finance Inc.) (collectively, with Refco Inc., the "Company" or "Refco") between July 1, 2004 and October 17, 2005 (the "Class Period"), and based on conduct asserted herein, were injured thereby.[1]

I. NATURE OF THE ACTION

1. This is a case about a company that suffered one of the most precipitous corporate meltdowns in U.S. history, and the well-compensated professional gatekeepers who utterly failed in their responsibilities to the investing public. That company is Refco, and the gatekeepers who failed to do their jobs include one of this country's largest auditing firms, fifteen Wall Street investment banks, a large and well-known law firm and one of its partners, an audit committee, a board of directors and corporate officers more intent on lining their own pockets than with ensuring that the company they ran reported accurate information to investors. As explained below, a little more than two months after completing a highly lucrative initial public offering, Refco admitted that its financial statements "should no longer be relied upon" because the Company had concealed hundreds of millions of dollars of uncollectible receivables owed to the Company by an off-balance sheet entity owned by its Chief Executive Officer ("CEO"). While this admission only partially revealed the true extent of the problems at the Company, it set into

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[1] For the convenience of the reader, Lead Plaintiffs attach hereto a glossary of definitions (Exhibit 1) and a table of Defendants and claims (Exhibit 2).

motion a chain of events and subsequent disclosures that – over the span of just a few days – led to Refco's abrupt collapse into bankruptcy.

2. Before its implosion, Refco was one of the world's largest providers of brokerage and clearing services in the international derivatives, currency and futures markets. An integral component of Refco's business model was to extend credit to its customers so that they could trade on "margin" and leverage their capital into larger trades. These larger trades, in turn, generated larger commissions, revenues and profits for Refco. Unknown to investors, however, Refco regularly extended credit to its customers based on little or no assessment of the customers' credit-worthiness. These "no questions asked" loans exposed the Company to the very same trading risks undertaken by its customers, some of whom were willing to make large and speculative wagers with Refco's money. Thus, Refco had, unbeknownst to the public, adopted a business model that sought to increase the Company's fees by gambling its very survival on the ability of its customers to make successful trades in the volatile currency, commodities and derivatives markets around the world.

3. As described in more detail below, the inherent dangers posed by this business model materialized – though were not revealed to the public – in the late 1990s, when a number of Refco's most significant customers suffered massive trading losses and were unable or unwilling to repay hundreds of millions of dollars of margin loans extended to them by Refco. Rather than properly account for these uncollectible receivables on Refco's books, Refco and its CEO, Phillip Bennett ("Bennett")—with the direct and active participation of Refco's outside lawyers at Mayer Brown LLP ("Mayer Brown"), including Mayer Brown partner Joseph P. Collins ("Collins")—hid them from public view by transferring these "IOUs" to Refco Group Holdings, Inc. ("RGHI"), an entity controlled by Bennett. RGHI had no operational functions,

but simply served as an empty vessel for Bennett and another former CEO of Refco to stash their large personal holdings of Refco stock.

4. Once these uncollectible debts were transferred off of Refco's balance sheet, Refco was left with a multi-hundred million dollar receivable owed to it by RGHI, a non-operating company with no conceivable means of repaying the receivable. Moreover, because RGHI was a "related-party" to Refco, the mere existence of the receivable would have raised numerous red flags to any potential investor or candid professional who was aware of it. To conceal the true nature of this receivable, Bennett and others, including Mayer Brown and Collins, devised a series of transactions whereby the receivable was shifted from RGHI to unrelated third parties just before the end of Refco's financial reporting periods, thus creating the illusion that they were legitimate (and collectible) third party receivables.

5. As was ultimately revealed, this scheme was simple to perpetrate and even easier to detect, had the gatekeepers for the investing public not averted their eyes. As described in more detail below, the scheme involved the manipulation of huge sums of money – as much as 75% of Refco's annual revenue and 900% of its reported annual net income – yearly and sometimes quarterly for at least five years. Like clock-work, a few days before Refco closed its books for the pertinent period, from at least 1999 until the scheme was discovered in October 2005, the Company loaned huge sums of money – as much as $970 million on one occasion – from one of its subsidiaries to one of its members and to certain third parties, which simultaneously loaned the same amount to RGHI. RGHI, in turn, used the proceeds from the member and third-party loans to pay down temporarily the uncollectible receivable it owed to Refco, while neither the uncollectible receivable nor the related-party transactions were disclosed to investors. Promptly after the close of each financial period, the circular transactions were

"unwound," the loans were repaid, and the uncollectible receivable from RGHI was returned to Refco's books, where it was apparent to anyone who had bothered or wanted to look.

6. The scheme allowed Refco to project the appearance of growth and success, which inflated the price of Refco's securities and enabled the Company's insiders to enrich themselves by hundreds of millions of dollars at investors' expense. For instance, in June 2004, Refco engaged in a Leveraged Buyout ("LBO") with the THL Partner Defendants (defined below). In conjunction with the LBO, Refco – with the direct assistance of some of Wall Street's most powerful investment banks – issued and sold $600 million worth of bonds to public investors. Although Refco's senior officers received tens of millions of dollars in cash payouts from the LBO and the bond offering, this was just the beginning of a feeding frenzy designed to further enrich the Company's insiders. Following the LBO, Refco issued tens of millions of dollars' worth of stock options to Refco's officers, audit committee members, and directors. Thus, Refco's insiders were perfectly positioned for the ultimate prize: taking their fraud-ridden company public through a lucrative initial public offering.

7. There was no shortage of professionals eager to help Refco sell itself to the public. On August 10, 2005, with the aid of fifteen Wall Street investment banks acting as underwriters, Refco conducted a $670 million initial public offering (the "IPO"). Defendant Bennett made over $118 million by selling a portion of his Refco holdings in the IPO; the THL Partner Defendants and their passive co-investors made nearly $170 million; and, through the exercise of a "green shoe" option built into the IPO, an additional $82,203,000 "special dividend" was paid to Refco's shareholders of record before the IPO (including Defendant Bennett and the THL Partner Defendants).

8. Bolstered by Refco's false financial statements, the IPO was an unqualified success for Refco's insiders. Indeed, on September 9, 2005, Bennett – a newly minted billionaire – was invited to ring the opening bell on the New York Stock Exchange ("NYSE"). With the Company's supposed gatekeepers ignoring their responsibilities, the price of Refco's common stock, issued at $22 per share, quickly rose above $28 per share, further enriching the Company's insiders. Just a short time later, however, the scheme unraveled when the huge related-party receivable was brought to light – not by the professional gatekeepers who had been associated with the Company for years, but rather by an employee who had been working at Refco for only two months.

9. On October 10, 2005 – a mere forty-two trading days after Refco's IPO – Refco publicly disclosed the existence of a multi-hundred million dollar uncollectible receivable that had previously been concealed, and admitted that its financial statements for the years ended February 28, 2002 ("fiscal year 2002"), February 28, 2003 ("fiscal year 2003"), February 29, 2004 ("fiscal year 2004"), February 28, 2005 ("fiscal year 2005"), and the quarter ended May 31, 2005 – all of which were integral to the IPO offering documents blessed by the underwriters, auditors, officers and directors just weeks earlier – should no longer be relied upon. This announcement set into motion a series of events and subsequent disclosures that culminated in Refco filing for bankruptcy just one week later.

10. In the days following the October 10, 2005 disclosure, the market learned that the problems at Refco were even more severe than those disclosed in that initial announcement, as Bennett was arrested and charged with securities fraud; Refco disclosed that its "liquidity . . . [was] no longer sufficient to continue operations;" the NYSE suspended trading in Refco shares; and Refco filed for bankruptcy in this District. These disclosures caused the prices of Refco's

publicly traded securities to collapse. Refco's bonds declined at least 80% in a single week, from 108.625% of par on October 7, 2005 to approximately 16% of par on October 14, 2005. Refco's publicly-traded stock declined from a closing price of $28.56 on October 7, 2005 to 65 cents on October 18, 2005 – a stunning drop of nearly 98% in little more than a week. Thus, in virtually the blink of an eye, unsuspecting investors who had relied on the truth and accuracy of the statements made by Refco and others in purchasing the Company's publicly-traded stock and bonds suffered hundreds of millions of dollars of damages.

11. On July 11, 2007, the examiner appointed in Refco's bankruptcy proceedings (the "Examiner") issued a lengthy report (the "Examiner's Report") describing in detail the Refco debacle, and the roles of certain of Refco's professional advisors therein. After reviewing a substantial volume of documents and interviewing numerous witnesses, the Examiner concluded, among other things, that there was evidence that Mayer Brown and Refco's outside auditor, Grant Thornton LLP, had knowledge of improprieties at Refco prior to the Bond Offering and the IPO. The Examiner did not evaluate the potential culpability of the other defendants named herein.

12. In this complaint, Plaintiffs assert two different sets of claims. The first set of claims (Counts One through Eight) asserts a series of strict liability and negligence claims based on the Securities Act of 1933 ("Securities Act"); these claims are asserted against the Defendants who are statutorily responsible for the untrue statements in the prospectuses and registration statements pursuant to which Refco issued securities to the public. Plaintiffs specifically disclaim any allegations of fraud in these non-fraud claims. In the second set of claims (Counts Nine through Sixteen), Plaintiffs assert a number of fraud-based claims under the Securities Exchange Act of 1934 ("Exchange Act") against those Defendants who directly participated in

the fraudulent scheme and those who knew about or were reckless with respect to discovering the fraud. In an opinion dated April 30, 2007, this Court denied the Defendants' motions to dismiss most of the claims asserted herein.[2]

II. JURISDICTION AND VENUE

13. Certain non-fraud claims asserted herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o. Certain other claims asserted herein arise under Sections 10(b), 20(a) and 20A of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a) and 78t-1, and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Rule 10b-5").

14. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. §§ 78aa, Section 22 of the Securities Act, 15 U.S.C. §§ 77v, and 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States.

15. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. §§ 78aa and Section 22 of the Securities Act, 15 U.S.C. §§ 77v. Many of the acts and transactions that constitute the violations of law complained of herein, including the dissemination to the public of untrue statements of material facts, occurred in this District.

16. In connection with the acts alleged in the Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not

[2] The claims that the Court sustained are not being amended in any way that would alter the Court's denial of the motions to dismiss those claims. Rather, this Second Amended Complaint (a) adds Mayer Brown and Collins as defendants and incorporates the allegations that Lead Plaintiffs had made against those defendants in a separate complaint filed in this Court on October 1, 2007 under the caption *RH Capital Associates LLC, et al. v. Mayer Brown LLP, et al.*; (b) asserts additional claims against certain previously-named defendants (namely, a claim for violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against the THL Defendants (defined below)); and (c) adds allegations and factual details to replead certain claims that the Court dismissed in its April 30, 2007 opinion (namely, claims against defendant Robert Trosten pursuant to Sections 10(b) and 20(a) of the Exchange Act and claims against the Bond Underwriter Defendants pursuant to Section 11 of the Securities Act).

limited to, the United States mails, interstate telephone communications and the facilities of national securities exchanges.

III. PARTIES AND RELEVANT NON-PARTIES

A. Plaintiffs

17. RH Capital Associates LLC ("RH Capital") is a Delaware limited liability company with its principal office and place of business located at 139 W. Saddle River Road, Saddle River, New Jersey. Founded in 1983, RH Capital is an investment firm that manages in excess of $600 million in assets. RH Capital is the attorney-in-fact for its investment clients and is vested with the authority to initiate legal action on their behalf. In addition, during the Class Period, RH Capital had full investment discretion on behalf of its clients and was solely responsible for making all investment decisions with respect to transactions in Refco securities. During the Class Period, RH Capital purchased or acquired Refco securities in and/or traceable to the IPO, and suffered millions of dollars in damages as a result of the violations of the federal securities laws alleged herein. On February 3, 2006, the Honorable Gerard E. Lynch appointed RH Capital as Co-Lead Plaintiff for this consolidated litigation.

18. Pacific Investment Management Company LLC ("PIMCO") is an investment manager and advisor for numerous institutional and individual clients worldwide, with its headquarters in Newport Beach, California. Founded in 1971, PIMCO has grown to become one of the world's leading fixed-income institutional money managers, currently managing over $600 billion in assets and overseeing numerous funds and accounts invested in such financial instruments as corporate bonds, emerging markets debt, municipal bonds, mortgage-backed securities, and other fixed income securities. During the Class Period, PIMCO had full investment discretion on behalf of its clients and was solely responsible for making all investment decisions with respect to transactions in the Company's securities. PIMCO

purchased $87,245,000 par amount of the Company's 9% Senior Subordinated Notes due 2012 during the Class Period. These purchases included $49,300,000 par amount of 144A Bonds (defined below) in the initial offering, $22,165,000 par amount of 144A Bonds in the secondary market, and $15,780,000 par amount of Registered Bonds (defined below). As a result of these purchases of Refco securities and the violations of the federal securities laws alleged herein, PIMCO suffered millions of dollars in damages. On February 3, 2006, the Honorable Gerard E. Lynch appointed PIMCO as Co-Lead Plaintiff for this consolidated litigation.

19. Plaintiff PIMCO Funds: Pacific Investment Management Series - PIMCO High Yield Fund (the "PIMCO High Yield Fund") is an investment fund that invests in a diversified portfolio of high yield securities. The PIMCO High Yield Fund is one of the numerous investment funds and accounts managed by PIMCO, and for which PIMCO has sole discretion to make investment decisions. PIMCO purchased $28,720,000 par amount of Bonds on behalf of the PIMCO High Yield Fund during the Class Period, including $20,000,000 par amount of 144A Bonds in the initial offering, $4,320,000 par amount of 144A Bonds in the secondary market, and $4,400,000 million par amount of Registered Bonds. As a result of these purchases of Refco securities and the violations of the federal securities laws alleged herein, PIMCO High Yield Fund suffered millions of dollars in damages. PIMCO High Yield Fund, which is not a Lead Plaintiff, has joined in this action as a Named Plaintiff and proposed Class Representative.

20. RH Capital, PIMCO, and the PIMCO High Yield Fund are collectively referred to herein as "Plaintiffs."

B. <u>The Company</u>

21. Refco Inc. is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Prior to its bankruptcy filing, Refco Inc. was a publicly traded holding company that, through its

subsidiaries, was in the business of providing execution and clearing services for exchange-trade derivatives, and providing prime brokerage services in the fixed income and foreign exchange markets. Refco Inc. was formed in connection with the IPO, and was the issuer of the stock sold pursuant to the IPO. At all relevant times after the IPO, 44% of Refco Inc.'s stock was owned by the THL Partner Defendants and their passive co-investors, 36.4% was owned by Defendant Bennett, and 19.6% was owned by public investors. Refco Inc. was a Delaware corporation with its principal offices located at One World Financial Center, 200 Liberty Street, Tower A, New York, New York. At all relevant times, the financial results of Refco Inc.'s operating subsidiaries – Refco Securities, LLC; Refco, LLC; and Refco Capital Markets Ltd. – were consolidated on Refco Inc.'s financial statements for financial reporting purposes.

22. Refco Group Ltd., LLC ("Refco Group") is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Refco Group, which was formed in 1999, is a Delaware limited liability company with its principal offices at One World Financial Center, 200 Liberty Street, Tower A, New York, New York. Prior to the formation of Refco Inc., the Company's business was conducted through Refco Group as the parent company. Refco Group was the co-issuer of the Company's Registered Bonds (defined below) and was a signatory to the Company's Bond Registration Statement (defined below). Refco Group filed a Form 10-K Annual Report and a Form 10-K/A Annual Report with the SEC in July 2005. At all relevant times, the financial results of Refco Group's operating subsidiaries – Refco Securities, LLC; Refco, LLC; and Refco Capital Markets Ltd. – were consolidated on Refco Group's financial statements for financial reporting purposes.

23. New Refco Group Ltd., LLC ("New Refco") is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Upon completion of the Bond Offering (defined below), New Refco became the parent of, and owned all of the outstanding membership interests in, Refco Group. At that time, the THL Partner Defendants and Defendant RGHI owned approximately 57% and 43%, respectively, of New Refco. Upon completion of the IPO, Refco became the public company parent of New Refco.

24. Refco Finance Holdings LLC ("Refco Finance Holdings") is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Refco Finance Holdings was a co-issuer of the Company's 144A Bonds (defined below). On the date of the issuance of those bonds, August 5, 2004, Refco Finance Holdings merged with and into Refco Group.

25. Refco Finance Inc. ("Refco Finance") is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Refco Finance was a co-issuer of the 144A Bonds (defined below) and, at the time those bonds were issued, was a wholly-owned subsidiary of Refco Finance Holdings. Upon completion of the Bond Offering (defined below), Refco Finance became a wholly-owned subsidiary of Refco Group. Refco Finance was also a co-issuer of the Company's Registered Bonds and was a signatory to the Company's Bond Registration Statement. Refco Finance, together with Refco Group, filed a Form 10-K Annual Report and a Form 10-K/A Annual Report with the SEC in July 2005.

26. Refco Capital Markets Ltd. ("Refco Capital") is a non-party that is not named as a defendant in this lawsuit due to its filing for bankruptcy protection under Chapter 11 of the

Bankruptcy Code on October 17, 2005. Refco Capital, a Bermuda-based Refco subsidiary, was an offshore securities and foreign exchange broker that traded over-the-counter derivatives contracts in a largely unregulated market. Refco Capital was one of the Company's three principal operating subsidiaries, and its financial results were consolidated on the Company's consolidated financial statements at all relevant times. Refco's senior executives were directly involved in the management and oversight of the business of Refco's subsidiaries, including Refco Capital. In a criminal complaint against Bennett filed by the United States Attorney for this District on October 12, 2005, Refco Capital was named as one of the entities utilized by Bennett to help hide the Company's uncollectible receivables.

27. Refco Managed Futures LLC ("Refco Futures") is an entity that was named as a defendant in Plaintiffs' Amended Complaint, but is not named as a defendant in this Second Amended Complaint due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on June 5, 2006. Refco Futures, a Delaware limited liability company, was a subsidiary of Refco with its principal offices located at the Company's headquarters in New York. Refco Futures was a guarantor and co-registrant of the Registered Bonds. At all relevant times, Bennett was a Manager of Refco Futures, Joseph J. Murphy was President and Principal Executive, Financial, and Accounting Officer of Refco Futures, and Philip Silverman was the company Secretary.

28. Westminster-Refco Management LLC ("Westminster-Refco") is an entity that was named as a defendant in Plaintiffs' Amended Complaint, but is not named as a defendant in this Second Amended Complaint due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on June 5, 2006. Westminster-Refco, a Delaware limited liability company, was a subsidiary of Refco with its principal offices located at the Company's

headquarters in New York. Westminster-Refco was a guarantor and co-registrant of the Registered Bonds. At all relevant times, Bennett was a Manager of Westminster-Refco, Joseph J. Murphy was its President and Principal Executive, Financial, and Accounting Officer, and Philip Silverman was the company Secretary.

29. Lind-Waldock Securities LLC ("Lind-Waldock") is an entity that was named as a defendant in Plaintiffs' Amended Complaint, but is not named as a defendant in this Second Amended Complaint due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on June 5, 2006. Lind-Waldock, a Delaware limited liability company, is an online retail derivatives brokerage primarily serving individual traders. At all relevant times, Lind-Waldock was a subsidiary of Refco Group, with its principal offices located at the Company's headquarters in New York. Bennett was President, Manager, and Principal Executive, Financial, and Accounting Officer of Lind-Waldock, and Silverman was its corporate Secretary. Lind-Waldock was a guarantor and co-registrant of the Registered Bonds.

C. The Defendants

30. The term "Defendants" as used herein shall refer to RGHI, The Phillip R. Bennett Three Year Annuity Trust, the Officer Defendants (as defined below), Robert C. Trosten, Tone N. Grant, the Audit Committee Defendants (as defined below), the THL Defendants (as defined below), Grant Thornton LLP, the Underwriter Defendants (as defined below), Mayer Brown and Collins.

1. The Bennett Shell-Entity Defendants

31. Defendant Refco Group Holdings, Inc. ("RGHI") is a Delaware corporation that was wholly owned and controlled by Refco's CEO, Bennett, at all relevant times after August 5, 2004. Prior to that date, RGHI was owned 50% by Bennett and 50% by Refco's former CEO, Defendant Tone Grant. RGHI lacked any business or operational function other than to serve as

a "parking" vehicle for Bennett (and, before the LBO, Tone Grant) to hold their personal holdings of Refco stock. RGHI was involved in the related-party transactions that concealed as much as $970 million worth of uncollectible debts owed to Refco, as alleged herein.

32. Defendant The Phillip R. Bennett Three Year Annuity Trust (the "Bennett Trust") is a U.S. domestic trust organized and existing under the laws of the State of Delaware. At all relevant times, Defendant Bennett was both trustee and beneficiary of the Bennett Trust. The Bennett Trust was another vehicle through which Bennett held his Refco stock.

2. The Officer Defendants

33. Defendant Phillip R. Bennett was the President, Chief Executive Officer ("CEO") and Chairman of Refco Group from September 1998 until he was forced to resign in October 2005. He also served as President, CEO, and Chairman of Refco, and as President and CEO of New Refco, at all relevant times. Prior to becoming CEO of Refco Group, Bennett held the position of Chief Financial Officer ("CFO") since 1983. Bennett joined Refco Group in 1981 from Chase Manhattan Bank, where he had held various positions involving credit and commercial lending since 1970. Bennett prepared and approved the Offering Memorandum (defined below) for the 144A Bonds. Bennett also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments), the Company's IPO Registration Statement, and the Company's Forms 10-K and 10-K/A for fiscal year 2005. In October 2005, Bennett was asked by the Board of Directors to take a leave of absence. He did so, then subsequently resigned from all posts at the Company on January 12, 2006. On November 10, 2005, a grand jury sitting in this District indicted Bennett, charging him with a massive securities fraud scheme as a result of the acts alleged herein.

34. Defendant Gerald M. Sherer ("Sherer") joined Refco Group as its Executive Vice President and CFO in January 2005. From 1997 through 2004, Sherer held various positions at

Deutsche Bank, including Deputy Global Head of Controlling, CFO of the Investment Bank, CFO of the Americas, and the Global Head of Internal Controls. From 1995 to 1997, Sherer was CFO of CIBC Woody Gundy's U.S. operations. Sherer also served as Senior Vice President of the Finance Division for Goldman Sachs from 1982 to 1995. Sherer prepared, approved and signed the Company's IPO Registration Statement and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Refco recently requested permission of the Bankruptcy Court to terminate and reject its employment agreement with Sherer.

35. Defendant William M. Sexton ("Sexton") served as Executive Vice President and Chief Operating Officer ("COO") of Refco Group beginning in August 2004 and was responsible for information technology, operations, accounting and finance, credit, margins, and risk control for Refco's futures businesses. As COO of Refco Group, Sexton was responsible for overseeing these functions with respect to each of the Company's operating subsidiaries, including Refco Capital, at all relevant times. He joined Refco Group in April 1999 and served as Executive Vice President and COO of Refco, LLC, a Refco Group subsidiary, from July 2001 until August 2004. After Bennett was forced to resign by the Board of Directors, Sexton served as CEO of Refco for a brief period of time before he resigned on November 11, 2005. From 1991 to 1997, Sexton served in various capacities for Chase Manhattan Bank, including financial controller for the U.S. Foreign Currency Markets, institutional sales for marketing derivatives, and for exchange and treasury products. Sexton prepared and approved the Company's Offering Memorandum for the Bonds, the Company's IPO Registration Statement, and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Sexton also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments).

36. Defendant Santo C. Maggio ("Maggio"), also known as "Sandy" Maggio, joined the Company in 1985, and was Executive Vice President of Refco Group and President and CEO of Refco Securities, LLC, the Company's NASD broker-dealer subsidiary, since 1991. Maggio was also President of the Refco Capital subsidiary, since 2001. Maggio prepared and approved the Offering Memorandum for the Bonds, the Company's IPO Registration Statement and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Maggio also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments). Like Bennett, Maggio was asked by Refco's Board of Directors to take a leave of absence in October 2005. He did so, then subsequently resigned from the Board.

37. Defendant Joseph J. Murphy ("Murphy") was Executive Vice President of Refco Group and responsible for global marketing since 1999. Murphy was also President of various Refco subsidiaries, including Refco Futures and Westminster Refco during the same period. From 1994 to 1999, Murphy was Executive Managing Director of HSBC Futures Americas and Cash Securities based in Chicago. Prior to joining HSBC, Murphy was a Vice President and Producing Manager with Chase Manhattan Futures Corporation of New York and held management positions in the Treasury Department of the Chase Manhattan Bank. Murphy prepared and approved the Offering Memorandum for the Bonds, the Company's IPO Registration Statement and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Murphy also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments).

38. Defendant Phillip Silverman ("Silverman") began serving as Secretary of the Company in at least 1999, and held numerous high-level executive positions within Refco and its subsidiaries, including Controller of Refco Group and, beginning in 2005, Director of Internal

Audit at Refco. Silverman was also Secretary of RGHI and of numerous Refco subsidiaries. Silverman has been a certified public accountant ("CPA") since 1982, was a close confidant of Bennett, and, on information and belief, was Bennett's personal accountant. Silverman prepared and approved the Offering Memorandum for the Bonds, the Company's IPO Registration Statement and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Silverman also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments). Silverman was asked by the Board of Directors to resign, and did resign, at or about the same time as Bennett and Maggio.

39. Defendant Dennis A. Klejna ("Klejna") began serving as Executive Vice President and General Counsel of Refco Group in 1999. Prior to joining Refco Group, Klejna was in private law practice in the Washington, D.C. firm of Vinson & Elkins, L.L.P. from 1996 to 1998, where his practice focused on derivatives trading regulations. Klejna was Director of the Division of Enforcement of the Commodity Futures Trading Commission ("CFTC") from 1983 to 1995. Klejna prepared and approved the Offering Memorandum for the Bonds, and the Company's fiscal year 2005 Forms 10-K and 10-K/A. Klejna also prepared, approved and signed the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments), and he prepared and approved the Company's IPO Registration Statement. As General Counsel of Refco Group, his duties included supervising the Company's outside legal counsel on all significant legal matters, and reviewing and approving bills received from outside counsel.

40. Defendants Bennett, Sherer, Sexton, Maggio, Murphy, Silverman, and Klejna shall be collectively referred to herein as the "Officer Defendants."

3. Defendant Trosten

41. Defendant Robert C. Trosten ("Trosten") was Executive Vice President and CFO of Refco Group from 2001 until October 2004, when he abruptly resigned. Prior to becoming CFO, Trosten was a member of the Company's corporate finance team from 1997 until 2001. He is a CPA, and before joining the Company he served as Vice President of Corporate and Regulatory Accounting at Lehman Brothers Inc. As CFO of the Company, Trosten's responsibilities included global accounting and budgeting, regulatory reporting, establishment of accounting policies, and the development and execution of key strategic initiatives at the corporate level. In the years leading up to his departure, Trosten received salary and bonuses totaling $2.2 million in fiscal year 2005, $3.1 million in fiscal year 2004, $2.8 million in fiscal year 2003, and $2.2 million in fiscal year 2002. According to his sworn testimony in an unrelated case, Trosten received a $45 million severance payment when he left the Company, after serving only three years as CFO. The Company did not publicly disclose to its investors this huge payment to Trosten, but instead simply announced that he had resigned in order to "pursue other financial interests." Trosten prepared and approved the Offering Memorandum for the Bonds and, along with Bennett and others, participated in the nationwide road show to market the Bonds to institutional investors. On October 24, 2006, Trosten was indicted by a grand jury sitting in this District on charges that include securities fraud and conspiracy to commit securities fraud in connection with the collapse of Refco.

4. Defendant Grant

42. Defendant Tone N. Grant ("Grant") was the CEO of Refco Group prior to Bennett's promotion to that position in September 1998. Upon information and belief, Grant continued to have direct involvement in the management of the Company even after stepping down as CEO. Indeed, prior to the LBO and Bond Offering (defined below), Grant owned 50%

of RGHI, which in turn owned approximately 43% of Refco Group. Grant was cashed out of his interest in RGHI effective as of the date of the Bond Offering, leaving Bennett as the sole owner of RGHI. On January 16, 2007, Grant was indicted by a grand jury sitting in this District on charges that include securities fraud and conspiracy to commit securities fraud in connection with the collapse of Refco.

5. **The Audit Committee Defendants**

43. Defendant Ronald L. O'Kelley ("O'Kelley") was at all relevant times a director of the Company and a member of the Company's audit committee. O'Kelley has been Chairman and CEO of Atlantic Coast Venture Investments, Inc., a private investment company, since 2002. O'Kelley previously served as Executive Vice President, CFO and Treasurer of State Street Corporation from 1995 to 2002, as CFO of Douglas Aircraft Company from 1991 to 1995, and as CFO of Rolls Royce, Inc. from 1983 to 1991. Prior to his tenure at Rolls-Royce, O'Kelley held several senior financial positions at Citigroup from 1975 to 1983, and at Texas Instruments, Inc. from 1969 to 1975. O'Kelley approved and signed the Company's IPO Registration Statement. O'Kelley also approved the Company's financial statements for all relevant periods, the October 12, 2004 Registration Statement (including subsequent amendments), and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

44. Defendant Leo R. Breitman ("Breitman") was at all relevant times a director of the Company and a member of its audit committee. Breitman was Chairman and CEO of Fleet Bank, Massachusetts, from 1991 through March 2004, and also served as Senior Lending Officer of FleetBoston Financial Corporation from 2002 through March 2004. From 1996 to 2002, Breitman was Managing Director of the Commercial Banking Division of FleetBoston Financial Corporation. Breitman approved and signed the Company's IPO Registration Statement. Breitman also approved the Company's financial statements for all relevant periods, the October

12, 2004 Bond Registration Statement (including subsequent amendments), and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

45. Defendant Nathan Gantcher ("Gantcher") was at all relevant times a director of the Company and a member of its audit committee. Gantcher was Co-Chairman, President and CEO of Alpha Investment Management L.L.C. from 2002 until August 2004. Prior to joining Alpha, Gantcher was a private investor from 1999 to 2001. Gantcher served as Vice Chairman of CIBC Oppenheimer Corp. from 1997 to 1999, and prior to that served as Co-CEO of Oppenheimer & Co., Inc. Gantcher approved and signed the Company's IPO Registration Statement. Gantcher also approved the Company's financial statements for all relevant periods, the October 12, 2004 Bond Registration Statement (including subsequent amendments), and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

46. Defendants O'Kelley, Breitman and Gantcher are collectively referred to herein as the "Audit Committee Defendants." Prior to the August 2005 IPO, the Audit Committee Defendants comprised the audit committee of New Refco, which performed the functions of an audit committee of Refco Group. After the IPO, the Audit Committee Defendants comprised the audit committee of Refco Inc. At all times (and as described more fully below), the Audit Committee Defendants were responsible for overseeing, among other things, the integrity of the Company's financial statements; the Company's compliance with legal and regulatory requirements; the engagement, independence and qualifications of the outside auditor; and the performance of the outside auditor.

6. <u>The Defendants Affiliated with Thomas H. Lee Partners</u>

47. Defendant Thomas H. Lee Partners, L.P. ("Thomas H. Lee Partners") is a private equity investment fund headquartered in Boston, Massachusetts, with approximately $12 billion of capital under management, which focuses on the acquisition of substantial equity stakes in

mid- to large-capitalization companies. In June 2004, as part of the LBO, Thomas H. Lee Partners and its affiliates and other related parties purchased a 57% equity stake in the Company for approximately $507 million. These affiliates and other related parties, whose interests in the Company were at all times beneficially owned by Thomas H. Lee Partners, include:

a. THL Refco Acquisition Partners, THL Refco Acquisition Partners II, and THL Refco Acquisition Partners III, each of which was, until its dissolution at or about the time of the IPO, a Delaware general partnership indirectly owned by Defendants Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P. and Thomas H. Lee Equity (Cayman) Fund V, L.P., which in turn are Delaware limited partnerships whose general partner is Defendant THL Equity Advisors V, LLC. Thomas H. Lee Partners is the sole member of THL Equity Advisors V, LLC, and thus controlled THL Refco Acquisition Partners, THL Refco Acquisition Partners II, and THL Refco Acquisition Partners III;

b. Defendant Thomas H. Lee Investors Limited Partnership, a Massachusetts limited partnership controlled by Defendant Thomas H. Lee; and

c. Defendant The 1997 Thomas H. Lee Nominee Trust, a trust over which Defendant Thomas H. Lee has voting and investment control.

48. Defendants Thomas H. Lee Partners, Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., Thomas H. Lee Investors Limited Partnership, and the 1997 Thomas H. Lee Nominee Trust are collectively referred to herein as the "THL Partner Defendants."

49. At all relevant times, the THL Partner Defendants managed and controlled the Company. One year after the LBO, the THL Partner Defendants brought Refco public in the

IPO. The THL Partner Defendants and their co-investors were paid $210 million in the deal, while still maintaining a controlling ownership stake of 38% of the Company's stock.

50. Defendant Thomas H. Lee ("Lee") was at all relevant times a director of the Company. Lee founded the Thomas H. Lee Company, the predecessor of Thomas H. Lee Partners, in 1974 and served as its Chairman and CEO from its inception until reportedly leaving that entity after the events giving rise to this litigation. Lee approved and signed the Company's IPO Registration Statement, and was identified as a director/manager of the Company in the Offering Memorandum for the Bonds, which Lee also approved. Lee also approved the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments) and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

51. Defendant David V. Harkins ("Harkins") was at all relevant times a director of the Company. Harkins is Vice Chairman and Managing Director of Private Equity Funds of Thomas H. Lee Partners, and has also served as President of Thomas H. Lee Partners. Harkins approved and signed the Company's IPO Registration Statement, and was identified as a director/manager of the Company in the Offering Memorandum for the Bonds, which Harkins also approved. Harkins also prepared and approved the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments) and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

52. Defendant Scott L. Jaeckel ("Jaeckel") was at all relevant times a director of the Company. Jaeckel is a Managing Director of Thomas H. Lee Partners. Jaeckel previously served as Vice President of Thomas H. Lee Partners from 2001 until December 2004, and as an Associate from 1994 to 1996 and from 1998 to 2001. Prior to his affiliation with Thomas H. Lee Partners, Jaeckel worked at Morgan Stanley in the Corporate Finance Department from 1992 to

1994. Jaeckel approved and signed Refco's IPO Registration Statement, and was identified as a director/manager of the Company in the Offering Memorandum for the Bonds, which Jaeckel also approved. Along with Bennett and others, Jaeckel participated in the nationwide road show to market the Company's bonds to institutional investors. Jaeckel also approved the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments) and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

53. Defendant Scott A. Schoen ("Schoen") was at all relevant times a director of the Company. Schoen joined Thomas H. Lee Partners in 1986 and currently serves as its Co-President. He previously served as a Managing Director of Thomas H. Lee Partners from 1992 to 2004 and Vice President from 1988 to 1992. Prior to joining Thomas H. Lee Partners, Schoen was in the Private Finance Department of Goldman Sachs. Schoen approved and signed Refco's IPO Registration Statement, and was identified as a director/manager of the Company in the Offering Memorandum for the Bonds, which Schoen also approved. Schoen also approved the Company's October 12, 2004 Bond Registration Statement (including subsequent amendments) and the Company's fiscal year 2005 Forms 10-K and 10-K/A.

54. Defendants Lee, Harkins, Jaeckel and Schoen are collectively referred to herein as the "THL Individual Defendants," and, together with the THL Partner Defendants, are collectively referred to herein as the "THL Defendants."

7. Defendant Grant Thornton

55. Defendant Grant Thornton LLP ("Grant Thornton") is the Chicago-based U.S. member firm of Grant Thornton International, one of six global accounting, tax and business advisory organizations with member firms in 111 countries. Grant Thornton is one of the largest U.S. accounting concerns outside of the "Big Four." Grant Thornton served as the Company's purportedly independent auditor at all relevant times since 2002, when it replaced Arthur

Andersen LLP ("Andersen") in that role. In addition to auditing the Company's consolidated financial statements for fiscal 2003, 2004 and 2005 and issuing clean and unqualified audit opinion letters thereon, Grant Thornton materially assisted in the preparation of those financial statements.

56. Grant Thornton also provided auditing and accounting services to the Company prior to and in connection with the LBO, the Bond Offering and the IPO. For the LBO and Bond Offering, these services included advice regarding the structure of the LBO, a review and/or re-audit of Refco's financial statements for the fiscal year ended February 28, 2002, and reviews of Refco's financial statements for the quarters ended May 31, 2003 and May 31, 2004. For the IPO, these services included reviews of Refco's financial statements for the quarters ended August 31, 2003, November 30, 2003, August 31, 2004, and November 30, 2004.

57. After the LBO, Grant Thornton conducted quarterly reviews of the Company's financial statements and, upon information and belief, also participated in the preparation of those financial statements.

58. In addition to serving as the auditor for Refco, Grant Thornton performed personal tax accounting services for Bennett.

8. The Underwriter Defendants

59. Defendant Credit Suisse Securities (USA) LLC (known at the time of the IPO as Credit Suisse First Boston LLC) ("Credit Suisse"), a subsidiary of Credit Suisse Group, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products and services. Its headquarters are located at 11 Madison Avenue, New York, New York. Credit Suisse was a lead placement agent, underwriter, and initial purchaser for the Company's Bond Offering, and a joint bookrunning manager of Refco's IPO of 26,500,000 shares of common stock. It sold and distributed Bonds to investors in the

Bond Offering, and it sold and distributed Refco common stock to the investing public pursuant to the registration statement and prospectus filed with the SEC in connection with the IPO (together, the "IPO Offering Materials"). As part of its duties as an underwriter, Credit Suisse was required to conduct, prior to the offerings of the Company's securities, a reasonable investigation of the Company to ensure that the statements contained in the Offering Memorandum for the Bonds and the IPO Offering Materials contained no misstatement or omission of material fact. Credit Suisse purchased and agreed to sell to the investing public at least $150,822,100 in common stock in connection with the IPO.

60. Defendant Banc of America Securities LLC ("BAS"), a subsidiary of Bank of America Corporation, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products and services. Its headquarters are located at 9 W. 57th Street, New York, New York. BAS was a lead placement agent, underwriter, and initial purchaser for the Company's Bond Offering, and a joint bookrunning manager of the IPO. It sold and distributed Bonds to investors in the Bond Offering, and it sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, BAS was required to conduct, prior to the offerings, a reasonable investigation of the Company to ensure that the statements contained in the Offering Memorandum for the Bonds and in the IPO Offering Materials contained no misstatement or omission of material fact. BAS purchased and agreed to sell to the investing public at least $118,640,500 in common stock in connection with the IPO.

61. Defendant Deutsche Bank Securities, Inc. ("Deutsche Bank"), a subsidiary of Deutsche Bank AG, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products and services. Its

headquarters are located at 60 Wall Street, New York, New York. Deutsche Bank was a lead placement agent, underwriter, and initial purchaser for the Company's Bond Offering, and a co-manager of the IPO. It sold and distributed Bonds to investors in the Bond Offering, and it sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Deutsche Bank was required to conduct, prior to the offerings, a reasonable investigation of the Company to ensure that the statements contained in the Offering Memorandum for the Bonds and in the IPO Offering Materials contained no misstatement or omission of material fact. Deutsche Bank purchased and agreed to sell to the investing public at least $37,778,400 in common stock in connection with the IPO.

62. Defendant Goldman, Sachs & Co. ("Goldman Sachs"), a subsidiary of The Goldman Sachs Group, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its global headquarters are located at 85 Broad Street, New York, New York. Goldman Sachs was a joint bookrunning manager of the IPO. It sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Goldman Sachs was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Goldman Sachs purchased and agreed to sell to the investing public at least $124,062,400 in common stock in connection with the IPO.

63. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 4 World Financial Center, New York, New York. Merrill Lynch was a co-manager of the IPO. It sold

and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Merrill Lynch was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Merrill Lynch purchased and agreed to sell to the investing public at least $53,927,500 in common stock in connection with the IPO.

64. Defendant J.P. Morgan Securities, Inc. ("J.P. Morgan"), a subsidiary of J.P. Morgan Chase & Co., is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 270 Park Avenue, New York, New York. J.P. Morgan was a co-manager of the IPO. It sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, J.P. Morgan was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. J.P. Morgan purchased and agreed to sell to the investing public at least $37,778,400 in common stock in connection with the IPO.

65. Defendant Sandler O'Neill & Partners, L.P. ("Sandler O'Neill") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 919 Third Avenue, New York, New York. Sandler O'Neill was a co-manager of the IPO. It sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Sandler O'Neill was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO

Offering Materials contained no misstatement or omission of material fact. Sandler O'Neill purchased and agreed to sell to the investing public at least $16,207,400 in common stock in connection with the IPO.

66. Defendant HSBC Securities (USA) Inc. ("HSBC"), a subsidiary of The HSBC Group, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 2700 Sanders Road, Prospect Heights, Illinois. HSBC was a co-manager of the IPO. It sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, HSBC was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. HSBC purchased and agreed to sell to the investing public at least $9,736,100 in common stock in connection with the IPO.

67. Defendant William Blair & Company, L.L.C. ("William Blair") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 222 West Adams Street, Chicago, Illinois. William Blair sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, William Blair was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. William Blair purchased and agreed to sell to the investing public at least $9,736,100 in common stock in connection with the IPO.

68. Defendant Harris Nesbitt Corp. ("Harris Nesbitt"), a subsidiary of the Bank of Montreal, is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 111 West Monroe St., Chicago, Illinois. Harris Nesbitt sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Harris Nesbitt was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Harris Nesbitt purchased and agreed to sell to the investing public at least $9,736,100 in common stock in connection with the IPO.

69. Defendant CMG Institutional Trading LLC ("CMG") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 123 North Wacker Drive, Chicago, Illinois. CMG sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, CMG was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. CMG purchased and agreed to sell to the investing public at least $2,915,000 in common stock in connection with the IPO.

70. Defendant Samuel A. Ramirez & Company, Inc. ("Ramirez & Co.") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 61 Broadway, Suite 2924, New York, New York. Ramirez & Co. sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter,

Ramirez & Co. was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Ramirez & Co. purchased and agreed to sell to the investing public at least $2,915,000 in common stock in connection with the IPO.

71. Defendant Muriel Siebert & Co. Inc. ("Seibert & Co.") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 885 Third Avenue, New York, New York. Seibert & Co. sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Seibert & Co. was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Seibert & Co. purchased and agreed to sell to the investing public at least $2,915,000 in common stock in connection with the IPO.

72. Defendant The Williams Capital Group, L.P. ("Williams Capital") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 650 Fifth Avenue, 10th Floor, New York, New York. Williams Capital sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Williams Capital was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Williams Capital purchased and agreed to sell to the investing public at least $2,915,000 in common stock in connection with the IPO.

73. Defendant Utendahl Capital Partners, L.P. ("Utendahl") is an investment banking firm that provides securities underwriting, financial advisory, capital raising, sales and trading, and financial products. Its headquarters are located at 30 Broad Street, New York, New York. Utendahl sold and distributed Refco common stock to the investing public pursuant to the IPO Offering Materials. As part of its duties as an underwriter, Utendahl was required to conduct, prior to the offering, a reasonable investigation of the Company to ensure that the statements contained in the IPO Offering Materials contained no misstatement or omission of material fact. Utendahl purchased and agreed to sell to the investing public at least $2,915,000 in common stock in connection with the IPO.

74. References herein to the "Bond Underwriter Defendants" refer collectively to Defendants Credit Suisse, BAS, and Deutsche Bank.

75. References herein to the "Stock Underwriter Defendants," refer collectively to Defendants Credit Suisse, BAS, Deutsche Bank, Goldman Sachs, Merrill Lynch, J.P. Morgan, Sandler O'Neill, HSBC, William Blair, Harris Nesbitt, CMG, Ramirez & Co., Seibert & Co., Williams Capital, and Utendahl.

9. **The Mayer Brown Defendants**

76. Defendant Mayer Brown LLP ("Mayer Brown"), an Illinois limited liability partnership, is a large, sophisticated law firm. Along with its affiliate Mayer Brown International LLP, Mayer Brown employs more than 1,500 lawyers and has offices in more than a dozen major cities worldwide, including New York. From 1994 until the Company's collapse, Mayer Brown and/or its predecessor firms were Refco's primary outside legal counsel.

77. Defendant Joseph P. Collins ("Collins") is a partner of Mayer Brown who works out of Mayer Brown's New York and Chicago offices. According to his profile on "Chambers and Partners," Collins has multiple years of experience representing "brokerage firms,

investment management clients, trading and investment advisors, hedge fund operators, investment companies, banks and pension plans" and regularly practices in areas such as "securities, futures, forwards, swaps, options and hybrid securities." From 1994 through the end of the Class Period, Collins was the primary contact between Mayer Brown and Refco and the billing partner in charge of the Refco account at Mayer Brown. Collins' relationship with Refco goes back nearly twenty years and began while Collins was an attorney at another law firm, Schiff Hardin & Waite ("SH&W"). At SH&W, Collins formed a close working relationship with Refco's former CEO, Thomas Dittmar. When Collins moved to Mayer Brown in 1994, he brought Refco to Mayer Brown as a client. Collins has been described in press reports as the "go-to-guy at Refco," and the vast majority of important transactions and deals at Refco were cleared through Collins or Mayer Brown attorneys who worked under the direct supervision of Collins.

78. From 1994 forward, Refco was an extremely lucrative client for Mayer Brown and Collins' largest personal client. Mayer Brown attorneys, with Collins as the primary contact and billing partner, provided a broad range of legal services to Refco, and Mayer Brown collected approximately $5 million in legal fees annually from Refco, which constituted nearly half the total billings for which Collins was responsible at Mayer Brown. As set forth in the Examiner's Report, as the billing partner on the Mayer Brown account, Collins reviewed Refco bills on a monthly basis and was therefore aware of the work that everyone at Mayer Brown performed for Refco.

79. As described in more detail below, Mayer Brown was intimately familiar with Refco's operations and finances and played a significant and direct role in designing, implementing and effecting the transactions by which Refco's uncollectible receivables were

concealed from the investing public, and they also prepared and edited Refco's misleading financial statements and other public disclosures including the Offering Memorandum for the Bonds and the IPO Registration Statement, which specifically identified Mayer Brown as counsel for Refco.

80. Other Mayer Brown attorneys referenced herein who played a significant role in Mayer Brown's representation of Refco include:

(a) Paul K. Koury. Paul K. Koury ("Koury") is a former Mayer Brown associate who worked out of Mayer Brown's New York office. Koury worked extensively for Collins and performed substantial work on the Refco account prior to his departure from Mayer Brown in May 2005.

(b) Robert Monk. Robert Monk ("Monk") is a former Mayer Brown associate who worked out of Mayer Brown's Chicago office. Monk worked extensively for Collins and performed substantial work on the Refco account prior to his departure from Mayer Brown in February 2001.

IV. CLASS ALLEGATIONS

81. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of all persons and entities who purchased or otherwise acquired Refco Finance Holdings 9% Senior Subordinated Notes due 2012 (CUSIP numbers 75866HAA5 and 75866HAC1) (the "Bonds") and/or Refco common stock during the Class Period, either in the respective initial offering, pursuant to a registration statement, or in the secondary market, and who, upon disclosure of certain facts alleged herein, were injured thereby. Excluded from the Class are: (a) Refco, BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische

Postsparkasse Aktiengesellschaft ("BAWAG"),[3] and their subsidiaries and affiliates; (b) the Defendants; (c) members of the families of the individual Defendants; (d) the subsidiaries and affiliates of the Defendants; (e) any person or entity who is a partner, officer, director, employee, or controlling person of Refco or BAWAG (including any of their subsidiaries or affiliates) or of any Defendant; (f) any entity in which BAWAG or any Defendant has a controlling interest; (g) the directors' and officers' liability insurance carriers for Refco or any Defendant, and any affiliates or subsidiaries thereof; and (h) the legal representatives, heirs, successors and assigns of any such excluded party.

82. The members of the Class are so numerous that joinder of all members is impracticable. During the Class Period, the Company issued $600 million par amount of debt securities and consummated an initial public offering of over 30 million shares of common stock. While Plaintiffs do not know the exact number of purchasers of those securities, Plaintiffs believe that Class members number in the thousands.

83. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and the other members of the Class acquired Bonds and/or Refco common stock in the initial offerings, pursuant to a registration statement, and/or in the secondary market, and sustained damages as a result of Defendants' wrongful conduct complained of herein.

84. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation. Plaintiffs have no interests that are adverse or antagonistic to the Class.

85. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual members of the

[3] BAWAG was formerly a defendant in this action, but all claims against it have been settled with the approval of the Court.

Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class members individually to seek redress for the wrongful conduct alleged herein.

86. Common questions of law and fact exist as to all members of the Class, and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Defendants' conduct as alleged herein;

(b) Whether the registration statements and prospectuses for the Company's securities contained material misstatements or omitted to state material information;

(c) Whether the S.E.C. filings, press releases, reports, and other public statements disseminated to the investing public during the Class Period contained material misstatements or omitted to state material information;

(d) Whether and to what extent the Company's financial statements failed to comply with generally accepted accounting principles ("GAAP") during the Class Period;

(e) Whether Grant Thornton's audits of the Company's financial statements during the Class Period were conducted in accordance with generally accepted auditing standards ("GAAS");

(f) Whether and to what extent the market prices of the Company's securities were artificially inflated during the Class Period due to the non-disclosures and/or misrepresentations complained of herein;

(g) With respect to Plaintiffs' claims under the Section 10(b) of the Exchange Act, whether the Defendants named in those claims acted with scienter;

(h) With respect to Plaintiffs' claims under the Securities Act, whether the Defendants named in those claims can sustain their burden of establishing an affirmative defense pursuant to the applicable statute;

(i) With respect to Plaintiffs' claims pursuant to Section 15 of the Securities Act and Section 20(a) of the Exchange Act, whether the Defendants named in those counts are controlling persons of the Company;

(j) Whether reliance may be presumed pursuant to the fraud-on-the-market rule and/or the fraud-created-the-market rule; and

(k) Whether the members of the Class have sustained damages as a result of the misconduct complained of herein, and if so, the proper measure thereof.

87. In addition to the common questions of law and fact, there are certain undisputed material facts that are common to the claims of all Class members. These undisputed facts, which Refco has publicly admitted or which are directly derived from Refco's public admissions, include that:

(a) Certain related-party receivables involving hundreds of millions of dollars had been omitted from the Company's financial statements prior to October 10, 2005;

(b) The Company's financial statements for the fiscal years 2002, 2003, 2004 and 2005, and for the quarter ended May 31, 2005, taken as a whole, should no longer be relied upon; and

(c) With respect to Plaintiffs' claims under the Securities Act, the offering materials for the Bond Offering and IPO contained material misstatements and omissions.

88. The names and addresses of those persons and entities who purchased securities in the Bond Offering and the IPO, and/or of the record owners of the Company's securities, are available from the Company's transfer agent(s) and/or from the Underwriter Defendants. Notice may be provided to such purchasers and/or record owners via first class mail using techniques and a form of notice similar to those customarily used in class actions.

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

A. Historical Background Regarding the Company

89. Before its implosion, Refco was one of the world's largest providers of brokerage and clearing services in the international derivatives, currency and futures markets. Essentially,

Refco provided financial services by executing trades on behalf of its customers and then recording and "clearing" those trades. Refco offered these services to a wide variety of customers – ranging from individuals to corporations, hedge funds, financial institutions, retail clients and professional traders – on a broad spectrum of derivatives exchanges and over-the-counter, cash and securities markets.

90. Refco's revenues were primarily comprised of (i) transaction fees earned from executing and clearing customer orders; and (ii) interest income earned on cash balances in its customers' trading accounts and from providing financing through repurchase transactions. The latter element of Refco's business model took on greater significance towards the end of the 1990s because it allowed Refco's customers to trade on "margin" and leverage their capital into larger trades, which generated larger commissions, revenues and profits for Refco.

91. By 2004, the Company had secured a dominant position in the burgeoning derivatives market. In fact, in that year it processed 461 million derivatives contacts, a volume comparable to that processed by the Chicago Board of Trade and greater than that processed by both the Chicago Board Options Exchange and the New York Mercantile Exchange that year.

92. However, the very practice that fueled Refco's success – extending margin loans to its trading customers – would prove to be disastrous when, on information and belief, a number of its customers defaulted in the wake of international financial crises that occurred in late 1997 and 1998. The Asian financial crisis began on July 2, 1997, when the Thai government was forced to devalue the Thai baht following months of speculative attacks on the currency. The collapse of the baht sparked economic decline in several Asian nations and led to similar devaluations of the Philippine peso, the Malaysian ringgit, the Indonesian rupiah and the Singaporean dollar. The Hong Kong stock market crashed in the wake of these currency

devaluations, suffering a staggering 40% loss in October 1997. The aftershocks of this collapse were felt far and wide, causing declines in markets in Brazil, Argentina and Mexico.

93. The Asian financial crisis hit the United States on October 27, 1997. The Dow Jones Industrial Average suffered the third largest point loss in its 109-year history that day, dropping by 7%. This "mini-crash" was so severe that it halted trading on the New York Stock Exchange for the first time ever.

94. A number of the Company's customers suffered extensive trading losses in the crisis and were unable to repay the credit the Company had extended to them. For example, Victor Niederhoffer ("Niederhoffer") lost nearly $100 million on investments made in part with improperly collateralized "margin" loans from Refco, and was unable or unwilling to repay over $70 million of the debt. According to media reports, these customers may have also included Ross Capital; Devonshire Strategic Holdings; RGF Ltd.; Kipler Investments; Hazelhurst Investments; Helford Resources; East Client Services Ltd.; Luhur; and/or several other entities. In particular, based on Lead Plaintiffs' investigation to date, and on information and belief, it appears that Ross Capital, the hedge fund run by Wolfgang Flottl, incurred considerable losses.

95. Not only did Refco's customers sustain trading losses during the late 1990s, but Refco itself sustained more than $40 million in losses on proprietary trades (trades carried out on its own behalf) during that period.

96. Faced with the unwelcome prospect of having to write off these extensive customer and proprietary trading losses, Defendant Bennett and others formulated a way to hide these bad debts from consumers of Refco's financial statements. First, the receivables were consolidated and transferred from the Company to RGHI, an entity controlled by Bennett. The Company's books then reflected a large receivable from RGHI. Knowing that RGHI lacked the

ability to pay that receivable, and concluding that such a large receivable would be less likely to draw attention if its character as a debt from a related-party were obscured, Bennett and others orchestrated a series of transactions whereby the RGHI receivable was temporarily paid off at the end of each of the Company's financial reporting periods and replaced on the books with receivables from unrelated entities, including BAWAG. These transactions – which were repeated yearly from 2000 and at the end of every quarter from at least 2004 until August 2005 – enabled the Company to hide from the investing public the existence of uncollectible debts and losses.

97. According to a complaint filed by counsel for Refco's Litigation Trustee on October 9, 2007, in a case captioned *VR Global Partners, L.P., et al. v. Bennett, et al.*, 07-CIV-8686 (S.D.N.Y.) (the "VR Complaint"), Bennett used RGHI as a means to manipulate Refco's financial statements in other ways as well, including:

(a) having Refco Capital and RGHI engage in fifty U.S. Treasury Note transactions on November 17, 2004, with RGHI losing $7.8 million on the transactions and Refco Capital gaining the same amount;

(b) shifting over $100 million in expenses from Refco to RGHI, including approximately $46.3 million in computer expenses between fiscal 2000 and fiscal 2006, thereby increasing Refco's net income and increasing the amount of the RGHI receivable by the same amount;

(c) causing Refco to accrue bogus interest income on the RGHI receivable – *i.e.*, interest that was purportedly received from RGHI on the amount of the receivable, but that was never actually paid – in the amounts of $62.75 million on January 28, 2004 and $12 million on or about February 11, 2005;

(d) causing Refco and RGHI to engage in certain so-called "transactions" that served no economic purpose and were merely designed to artificially inflate Refco's net income, including two "Transfers" totaling $13 million on January 28, 2004; fifty transactions in United States Treasury Notes on November 17, 2004 that resulted in gains to Refco and losses to RGHI of approximately $7.8 million; and over thirty fictitious foreign currency exchange transactions whereby RGHI lost $5 million (which was added to the RGHI receivable) and Refco recognized $5 million in revenue.

B. Early Efforts to Sell the Company

98. The above-described manipulations of Refco's financial results were designed to allow RGHI – owned by Bennett and Grant – to sell its interests in the Company at artificially inflated prices. Mayer Brown and Collins were closely involved in the efforts of the Company's insiders to sell Refco.

99. The Examiner concluded that by no later than February 6, 2002, Mayer Brown knew that the ultimate goal of Bennett and Grant was to sell the entire Company and monetize their ownership interests. A purchase agreement drafted by Mayer Brown on or about February 6, 2002 stated that the parties to the agreement (Refco, RGHI and an unnamed purchaser) agreed that the "Company's board of managers shall endeavor to sell ownership of the Company or its assets." Collins had discussed the terms of the purchase with Bennett and others and had personally revised prior drafts of the agreement. The Examiner also noted that, based on a review of Mayer Brown's time records, Collins may have been aware of the plan to sell the Company as early as May 1999. Indeed, Mayer Brown had represented Refco in the transaction whereby BAWAG purchased its interest in the Company in 1999.

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

100. In November 2003, after numerous aborted efforts to sell all or parts of the Company, including unsuccessful efforts led by Credit Suisse to launch an IPO and/or locate a commercial bank interested in buying Refco, Bennett and others at Refco began to negotiate with the THL Defendants to enter a leveraged buyout transaction whereby a large portion of the Company would be sold to public investors.

101. On June 8, 2004, the THL Partner Defendants and their passive co-investors entered into an equity purchase and merger agreement (the "Merger Agreement") with Refco Group and RGHI. Pursuant to the Merger Agreement, as amended on July 9, 2004, New Refco would become the parent company of Refco Group, and the THL Partner Defendants and their co-investors would acquire a 57% equity stake in New Refco. The remaining 43% of New Refco was to be held by RGHI, which would then be wholly-owned by Bennett. Grant and BAWAG were to be cashed out of their respective ownership interests in Refco Group. Mayer Brown negotiated, drafted and reviewed the Merger Agreement on behalf of both Refco and RGHI. As the Examiner concluded, "Mayer Brown represented Refco and RGHI in connection with the LBO and was deeply involved in the LBO." The Merger Agreement took effect on August 5, 2004.

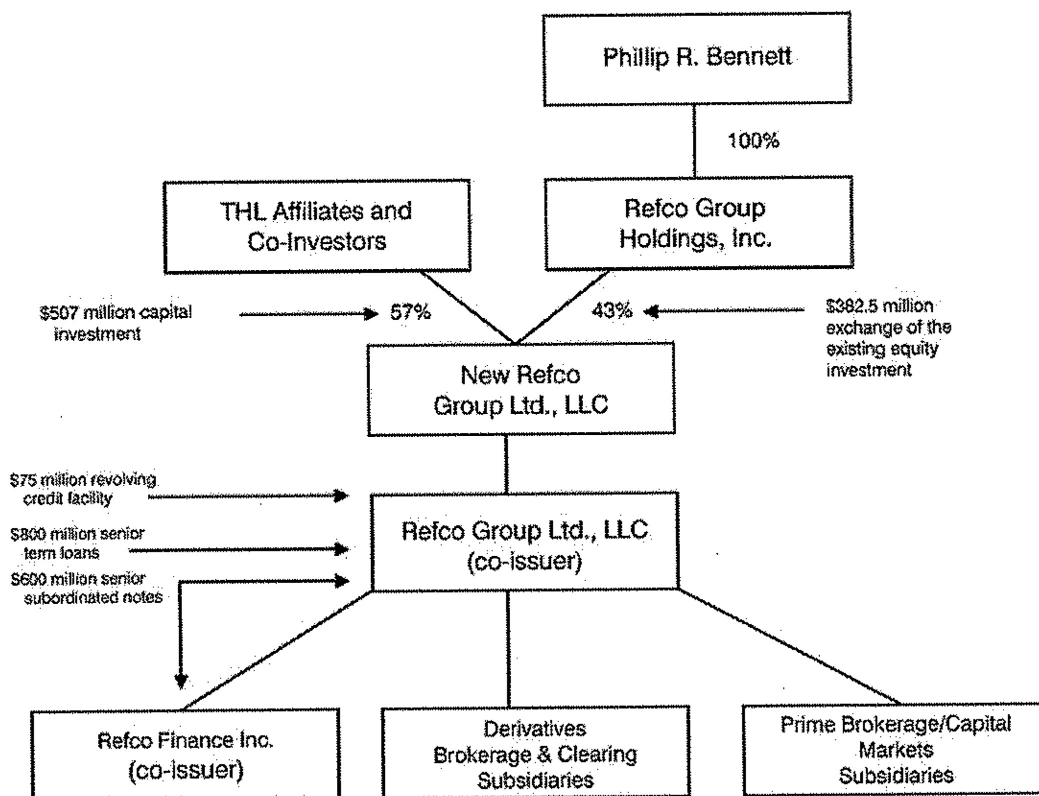
102. The THL Partner Defendants and their passive co-investors paid $507 million in cash for their share of New Refco while Bennett (through RGHI) rolled over $382.5 million of his Refco Group stock to pay for his share. To raise the remaining funds needed to cash-out the existing equity holders (approximately $1.4 billion) and repay existing debt (including debt owed to RGHI), the Company took out $800 million in term loans pursuant to a senior credit facility, opened a $75 million revolving line of credit, and issued $600 million of 9% Senior Subordinated Notes due in 2012 (the "144A Bonds").

103. On August 5, 2004, as part of the recapitalization of Refco, Refco Group and Refco Finance transferred more than $1.325 billion and an asset management business, Forstmann-Leff International Associates, LLC (valued at approximately $231 million), to RGHI. On the same date, RGHI transferred $1.342 billion to BAWAG through a series of transactions which extinguished BAWAG's ownership interest in the Company.

104. Defendants BAS, Credit Suisse and Deutsche Bank acted as co-lead arrangers and joint book running managers for the senior credit facility, and as lead underwriters and placement agents, joint book-running managers, and initial purchasers for the offering of 144A Bonds (the "Bond Offering"). Defendants Credit Suisse and Deutsche Bank also acted as syndication agent and documentation agent for the senior credit facility, respectively, while Bank of America, N.A., an affiliate of Defendant BAS, acted as administrative agent, swingline lender and letter of credit issuer.

105. Refco Finance Holdings and Refco Finance were co-issuers of the 144A Bonds. Upon completion of the Bond Offering, Refco Finance Holdings merged into Refco Group. Refco Finance, which was a wholly-owned subsidiary of Refco Finance Holdings at the time of the Bond Offering, thus became a subsidiary of Refco Group.

106. The chart below (taken from the Bond Registration Statement and the IPO Registration Statement) summarizes the structure of the Company upon completion of the LBO and the Bond Offering:



D. The Bond Offering

107. The 144A Bonds were issued in the same manner as much high yield debt. The issuance involved two steps, constituting a single plan of financing. The general purpose of the plan was to obtain rapid access to the public capital markets in order to obtain funds at a cost of capital corresponding to registered, freely tradable securities. The first step, pursuant to which the issuers actually obtained the funds, was to issue the 144A Bonds through underwriters pursuant to an offering memorandum (the "Offering Memorandum"). The second step, mandated by the Offering Memorandum and the underwriting contracts, was for the issuers of the 144A Bonds to offer to exchange the bonds issued in the first step for identical bonds issued pursuant to a registration statement (the "Registered Bonds") (together with the 144A Bonds, the "Bonds"). The second step was merely an exchange of bonds issued without prior registration

for identical bonds issued pursuant to a registration statement and for which the issuers had already received funds in the first step (the "Exchange Offer"). Accordingly, no new funds flowed to the issuer in the second step. The entire two-step process constituted a public offering of the Bonds.

108. This two-step procedure is known in the investment banking industry as a "Rule 144A/Exxon Capital Exchange Offer." The reference to "Rule 144A" relates to the first step of the transaction, by which the initial purchasers (the Bond Underwriter Defendants) purchase the securities from the issuers and resell them pursuant to an SEC regulation providing a safe harbor for resales of unregistered securities to "Qualified Institutional Buyers." The second step, the "Exxon Capital Exchange Offer," is the means by which the 144A bonds are converted into registered, freely tradable securities. In practice, the Rule 144A/Exxon Capital framework does not differ from registration. High yield issuers and their underwriters prepare the offering memoranda for Rule 144A offerings in contemplation of the Exxon Capital Exchange Offer and, accordingly, prepare such documents to conform in all material respects with the requirements for a prospectus included in a registration statement on SEC Form S-1.

109. The Bond Underwriter Defendants purchased the 144A Bonds from the issuers and resold them to investors with the understanding and expectation that the 144A Bonds would later be exchanged for freely tradeable Registered Bonds in the second step Exchange Offer. The Bond Underwriter Defendants were compensated for their underwriting services by a discount between the price at which they initially purchased the 144A Bonds from the issuers and the offering price. Further, the Bond Underwriter Defendants obtained from the issuers a purported obligation to indemnify them from certain liabilities, including liabilities under the Securities Act.

110. As is the case with all high yield debt issued in such two-step offerings, the 144A Bonds were priced from the outset as registered, freely tradable securities. Because the co-issuers undertook to use their best efforts to offer the Registered Bonds in exchange for the 144A Bonds within 450 days after the Bond Offering, the market accepted such pricing and did not demand the substantially higher yield that would otherwise be expected in the purchase of unregistered securities. Indeed, the Exchange Offer was consummated in April 2005, only eight months after the 144A Bonds were issued.

111. Upon the occurrence of certain events, including failure of the issuers to have the Bond Registration Statement declared effective within 450 days after the issuance of the 144A Bonds, or failure to consummate the Exchange Offer within 40 days after the Bond Registration Statement became effective, the issuers would be obligated to increase the interest payments due to the holders of 144A Bond by 0.25% *per annum* for the first 90-day period following such failure, plus an additional 0.25% *per annum* for each subsequent 90-day period in which the failure was not cured, up to a maximum additional interest rate of 1.0% *per annum*.

112. PIMCO, the PIMCO High Yield Fund, and other members of the Class would not have purchased the 144A Bonds without the understanding that they would have an opportunity to exchange them for Registered Bonds. Indeed, the funds and accounts for which PIMCO and many other class members purchased the 144A Bonds were subject to restrictions on the amount of unregistered securities they could hold, since, among other reasons, they required flexibility and liquidity to respond to investors' redemption requests.

1. The Offering Memorandum

113. The 144A Bonds were marketed to PIMCO, other Qualified Institutional Buyers and other members of the Class pursuant to the Offering Memorandum, which was first disseminated on or about July 12, 2004. The Offering Memorandum described the terms of the

Bonds, provided information concerning the Company's operations and finances, and contained the Company's audited financial statements for the fiscal years ended February 28, 2004 and February 28, 2003. The Offering Memorandum contained all the information required to be set forth in a prospectus included in a registration statement filed with the SEC.

114. The Offering Memorandum, which described and provided for the entire two-step process by which the Bonds were transmitted into the market, constituted a prospectus for the Bonds, and was used by the Bond Underwriter Defendants, Bennett, Trosten, Jaeckel, and the THL Partner Defendants to solicit PIMCO, the PIMCO High Yield Fund, and other members of the Class not only to participate in the first step of the offering, but also to participate in the second step exchange by which the 144A Bonds achieved their status as registered, freely tradable securities. The two steps of the offering were inseparable, and each and every communication soliciting the participation of any person in the first step necessarily also solicited participation in the second step.

115. The Offering Memorandum was created by, among others, Defendants Credit Suisse, BAS, Deutsche Bank, Bennett, Trosten, Jaeckel, the THL Partner Defendants, Mayer Brown, and Collins. Defendant Grant Thornton reviewed the Offering Memorandum prior to its issuance, helped prepare the financial statements and other financial data contained therein, and consented to the inclusion of its audit opinion therein.

116. The Offering Memorandum states that Mayer Brown represented Refco Group in connection with the Bond Offering. In that role, Mayer Brown was heavily involved in the process of issuing the 144A Bonds and preparing and disseminating the Offering Memorandum to investors. According to the Examiner's Report, Collins participated in numerous conferences with Bennett and others and "reviewed, revised and reviewed revisions to the offering circular to be submitted in connection with the exchange of the privately purchased notes for publicly traded notes." Other Mayer Brown attorneys, including partners Angela Lang ("Lang") and Edward Best ("Best"), attended numerous drafting sessions where the content of the Offering Memorandum was discussed, drafted and revised, and successive drafts of the Offering Memorandum were routinely circulated to and reviewed and revised by Collins and other Mayer Brown attorneys. Additionally, Collins and other Mayer Brown attorneys personally drafted certain sections of the Offering Memorandum, including the Management Discussion & Analysis ("MD&A") section which was drafted by Best and reviewed by Collins.

[REDACTED] As described below, the MD&A section of the Offering Memorandum contained a number of material untrue statements and omitted to state facts that were needed to make it not misleading.

117. As noted by the Examiner, in the midst of these efforts to sell a large portion of Refco to public investors, Collins also sent Refco a billing statement on behalf of Mayer Brown which described time charged to "revision to [Customer X] loan documents." Thus, at the same time Mayer Brown was drafting and reviewing an Offering Memorandum containing representations regarding Refco's financial condition that Mayer Brown knew would be relied upon by potential investors, Mayer Brown was collecting legal fees for its substantial role in transactions that rendered those representations materially false and misleading.

118. As set forth below, the Offering Memorandum pursuant to which PIMCO, the PIMCO High Yield Fund, and other members of the Class were induced to purchase the Bonds contained a number of untrue statements of material facts and omitted to state material facts needed to make it not misleading.

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

119. The Offering Memorandum contained financial statements and other statements regarding the Company's financial performance that purported to demonstrate the Company's soundness, but which in reality contained untrue statements of material facts and omitted to state material facts required therein or necessary to make the statements therein not misleading. These statements were made in several contexts, including (1) in the audited financial statements included in the Offering Memorandum; (2) in the discussion of certain historical consolidated financial data derived from the Company's audited consolidated financial statements; (3) in the unaudited financial statements included in the Offering Memorandum; (4) in the discussion of

certain historical consolidated financial data derived from the Company's unaudited consolidated financial statements; and (5) in statements made in the Management Discussion & Analysis ("MD&A") and other textual portions of the Offering Memorandum.

120. Refco Group's Consolidated Balance Sheets, as audited and certified by Grant Thornton and as included in the Offering Memorandum, stated that Refco Group and its subsidiaries had receivables from customers in the amounts of $1,827,190,000 and $1,795,445,000 for fiscal years 2004 and 2003, respectively; total assets of $33,332,172,000 and $19,215,429,000 for fiscal years 2004 and 2003, respectively; and members' equity of $616,084,000 and $566,361,000 for fiscal years 2004 and 2003, respectively.

121. Further, Refco Group's Consolidated Statements of Income, as audited and certified by Grant Thornton and as included in the Offering Memorandum, stated that Refco Group and its subsidiaries incurred general, administrative and other expenses in the amounts of $200,902,000 and $167,464,000 for fiscal years 2004 and 2003, respectively; and earned net income of $187,156,000 and $140,119,000 for fiscal years 2004 and 2003, respectively.

122. Grant Thornton gave its written consent to the inclusion of its audit opinion on the Company's fiscal years 2003 and 2004 financial statements in the Offering Memorandum. In the audit opinion, Grant Thornton certified that those financial statements had been prepared in accordance with GAAP. Grant Thornton's report stated:

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Members of
Refco Group Ltd., LLC

We have audited the accompanying consolidated balance sheets of Refco Group Ltd., LLC (the "Company") (a Delaware limited liability company) and subsidiaries (the "Group") as of February 29, 2004 and February 28, 2003, and the related consolidated statements of income,

> changes in members' equity and cash flows for each of the two years then ended....
>
> We conducted our audits in accordance with the auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.
>
> In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Refco Group Ltd., LLC and subsidiaries as of February 29, 2004 and February 28, 2003, and the results of their operations and their cash flows for each of the two years then ended in conformity with accounting principles generally accepted in the United States of America.
>
> Grant Thornton LLP
> New York, New York
> April 27, 2004

123. In addition to the financial statements audited by Grant Thornton, the Offering Memorandum presented certain historical consolidated financial data derived from the Company's consolidated financial statements. Based on the audited financial statements for fiscal years 2003 and 2004, respectively, the Offering Memorandum reflected EBITDA (that is, earnings before interest, income tax, depreciation and amortization) for those years of $211 million and $258 million, respectively. Based on the Company's unaudited consolidated financial statements for fiscal years 2000, 2001 and 2002, the Offering Memorandum reported:

(a) general, administrative and other expenses in the amounts of $104 million, $174 million and $172 million for the fiscal years ended February 29, 2000 ("fiscal year 2000"), February 28, 2001 ("fiscal year 2001"), and fiscal year 2002, respectively;

(b) net income of $45 million, $72 million and $93 million for fiscal years 2000, 2001, and 2002, respectively;

(c) EBITDA of $92 million, $140 million, and $179 million for fiscal years 2000, 2001, and 2002, respectively;

(d) total assets of $17.7 billion, $18.2 billion and $22.6 billion for fiscal years 2000, 2001, and 2002, respectively; and

(e) members' equity of $441 million, $500 million and $522 million for fiscal years 2000, 2001, and 2002, respectively.

124. The Offering Memorandum also included unaudited financial results for the three month period ended May 31, 2004, which was the first quarter of the Company's fiscal year 2005. For that quarter, the Offering Memorandum reported general, administrative and other expenses in the amount of $57,502,000; net income of $59,270,000; EBITDA of $78 million; total assets of $55,229,109,000; receivables from customers of $2,290,621,000; and members' equity of $671,100,000.

125. Further, the Offering Memorandum included Unaudited Pro Forma Consolidated Statements of Operations for fiscal year 2004; the twelve months ended May 31, 2004; and the three months ended May 31, 2004. The Unaudited Pro Forma Consolidated Statements of Operations treated the Bond Offering and related transactions as if they had occurred on March 1, 2003. For fiscal year 2004, the Offering Memorandum reflected, on a pro forma basis, general, administrative and other expenses of $188 million and net income of $108 million. For the twelve months ended May 31, 2004, the Offering Memorandum reflected, on a pro forma basis, general, administrative and other expenses of $199 million and net income of $116 million. For the three months ended May 31, 2004, the Offering Memorandum reflected, on a

pro forma basis, general, administrative and other expenses of $52 million and net income of $35 million.

126. In addition, the Offering Memorandum included an Unaudited Pro Forma Consolidated Balance Sheet as of May 31, 2004, which treated the Bond Offering and related transactions as if they had occurred on May 31, 2004. As of May 31, 2004, the Offering Memorandum reflected, on a pro forma basis, members' equity of $76 million; receivables from customers of $2.26 billion; and total assets of $55.6 billion.

127. The textual portions of the Offering Memorandum also included a significant amount of financial information. For example, the MD&A section—which Mayer Brown drafted—contains the following statements:

(a) "General, administrative and other expenses on a consolidated basis for the three months ended May 31, 2004 increased $14.8 million, or 34.7%, to $57.5 million from $42.7 million for the three months ended May 31, 2003."

(b) "General, administrative and other expenses on a consolidated basis for the year ended February 29, 2004 increased $33.5 million, or 20.0%, to $200.9 million from $167.4 million for the year ended February 28, 2003."

(c) "Operating profit on a consolidated basis for the three months ended May 31, 2004 increased $21.2 million, or 44.9%, to $68.4 million from $47.2 million for the three months ended May 31, 2003."

(d) "Operating profit on a consolidated basis for the year ended February 29, 2004 increased $42.9 million, or 27.2%, to $200.6 million from $157.7 million for the year ended February 28, 2003."

(e) "We currently have no off balance sheet arrangements."

(f) "We generated significant free cash flow afforded by high margins and a business model that allows us to grow without significant capital expenditures. For our fiscal year 2004, we generated EBITDA of $258.0 million with capital expenditures of $11.2 million. While our EBITDA has increased from $92.0 million to $258.0 million from fiscal year 2000 to 2004, our average capital expenditures were $16.0 million for the same period."

(g) "[O]ur management has demonstrated its ability to operate in a leveraged capital structure by improving our leverage ratio, which we define as the ratio of long-term debt and preferred securities issued by subsidiaries to EBITDA. From fiscal year 2000 to fiscal year 2004, our total leverage ratio decreased from 4.0x to 1.5x."

128. The statements set forth above were materially untrue because Refco failed to disclose the existence of hundreds of millions of dollars of uncollectible receivables, proprietary trading losses, related-party transactions, and guarantees. Additionally, Refco had inappropriately shifted expenses from Refco to RGHI and recorded income on Refco's books that Refco had neither received nor earned, and/or that was the result of "transactions" with RGHI that lacked economic substance and were solely for the purpose of inflating Refco's net income. Among other things, the reported results for receivables from customers, net assets, members' equity, net income and EBITDA discussed above were materially overstated, and the reported results for general, administrative and other expenses (which includes allowances for doubtful accounts) were materially understated. Further, the pro forma financial statements were based on the Company's misstated financial results and, therefore, contained untrue statements of material facts for the same reasons the Company's financial results contained untrue statements of material facts.

129. The Company and the THL Partner Defendants have publicly admitted that Refco's reported financial information for fiscal years 2002, 2003 and 2004, as contained in the Offering Memorandum, was untrue and should not be relied upon. Specifically, on October 10, 2005, Refco announced that the Company's financial statements for fiscal years 2002, 2003, and 2004, among other periods – taken as a whole – could no longer be relied upon. The THL Partner Defendants have also conceded, in a complaint filed in this District on November 14, 2005, and styled Thomas H. Lee Equity Fund V., L.P., et al. v. Phillip R. Bennett, et al., No. 05 Civ. 9608 (S.D.N.Y.) (the "THL Complaint"), that the Company's financial statements for these periods (and others) contained untrue statements of material facts.

130. In addition to the foregoing admissions of Refco and the THL Partner Defendants, Lead Plaintiffs have, in the course of their ongoing investigation, gathered substantial evidence concerning the scope of the untrue statements in the financial statements contained in the Offering Memorandum. Lead Plaintiffs have reviewed documents and conducted witness interviews pertaining to several sets of transactions between Refco and third party customers of Refco which show, among other things, that the financial statements and description of the Company's historical performance contained in the Offering Memorandum contained material statements and omissions of material fact because:

(a) For a twelve-day period bracketing February 28, 2000, the final day of Refco's fiscal year 2000, a receivable from RGHI to Refco in the amount of $610,000,000 was temporarily replaced with (1) a receivable in the amount of $300,000,000 from BAWAG, (2) a receivable in the amount of $150,000,000 from an entity called CIM Ventures, Inc. ("CIM Ventures"), which was a subsidiary of Ingram Micro, Inc. ("Ingram"), (3) a receivable in the amount of $110,000,000 from an entity

called CS Land Management LLC ("CS Land"), and (4) a receivable in the amount of $50,000,000 from EMF Core Fund Limited ("EMF"), an affiliate of hedge fund manager EMF Financial Products, LLC;

(b) For a twelve-day period bracketing February 28, 2001, the final day of Refco's fiscal year 2001, a receivable from RGHI to Refco in the amount of $750,000,000 was temporarily replaced with (1) a receivable in the amount of $250,000,000 from CIM Ventures, (2) a receivable in the amount of $300,000,000 from BAWAG, and (3) a receivable in the amount of $200,000,000 from a subsidiary of EMF Financial Products, LLC called Delta Flyer Fund, LLC ("Delta Flyer");

(c) For a twelve-day period bracketing February 28, 2002, the final day of Refco's fiscal year 2002, a receivable from RGHI to Refco in the amount of $925,000,000 was temporarily replaced with (1) a receivable in the amount of $325,000,000 from a third-party customer of Refco ("Customer X"), (2) a receivable in the amount of $300,000,000 from BAWAG, (3) a receivable in the amount of $175,000,000 from Delta Flyer, and (4) a receivable in the amount of $125,000,000 from Beckenham Trading Company, Inc. ("Beckenham");

(d) For a sixteen-day period bracketing February 28, 2003, the final day of Refco's fiscal year 2003, a receivable from RGHI to Refco in the amount of $900,000,000 was temporarily replaced with (1) a receivable in the amount of $500,000,000 from Customer X, (2) a receivable in the amount of $250,000,000 from BAWAG, and (3) a receivable in the amount of $150,000,000 from Delta Flyer;

(e) For a seventeen-day period bracketing February 29, 2004, the final day of Refco's fiscal year 2004, a receivable from RGHI to Refco in the amount of

$970,000,000 was temporarily replaced with (1) a receivable in the amount of $720,000,000 from Customer X, and (2) a receivable in the amount of $250,000,000 from BAWAG; and

(f) For a twelve-day period bracketing May 31, 2004, the final day of Refco's first quarter for fiscal year 2005, a receivable from RGHI to Refco in the amount of $700,000,000 was temporarily replaced with a receivable in the amount of $700,000,000 from Customer X.

131. The Offering Memorandum also contained materially untrue statements by the Company's outside auditor, Defendant Grant Thornton, in addition to those contained within the financial statements that Grant Thornton helped prepare. Grant Thornton's statements that it had "conducted [its] audits in accordance with the auditing standards generally accepted in the United States of America" and that "the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Refco Group Ltd., LLC and its subsidiaries as of February 29, 2004 and February 28, 2003, and the results of their operations and their cash flows for each of the two years then ended in conformity with accounting principles generally accepted in the United States of America" constituted untrue statements of material facts. Grant Thornton, as set forth more fully below, had not conducted its audits in accordance with GAAS. Further, the Company's financial statements as of February 29, 2004 and February 28, 2003 and the results of its operations and cash flows for each of the two years then ended did not present fairly, in all material respects, the Company's financial position in accordance with GAAP.

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

132. To assure investors that the Bonds were a sound investment, the Offering Memorandum stressed that the Company had adequately accounted for doubtful accounts and related-party transactions. With respect to receivables from and payable to customers, the Notes To Consolidated Financial Statements stated:

> **Receivables from and payable to customers**
>
> These balances primarily pertain to margin and open contractual commitments related to customer futures, foreign currencies and securities transactions. ... For certain receivables that are not fully secured and where the Group deems appropriate, the Group pursues collection of these receivables through various means, including legal action, and provides reserves when, in the opinion of management, such reserves are appropriate. Reserves of $65.2 million and $42.7 million have been provided against receivables from customers as of February 29, 2004 and February 28, 2003, respectively.

133. Similarly, the MD&A section of the Offering Memorandum stated:

> **Receivables from customers-provisions for doubtful accounts.** Our receivables are generally collateralized with marketable securities. For certain customer receivables that are not fully secured, we establish reserves when, in the opinion of management, such reserves are appropriate. Reserves of $65.2 million and $42.7 million have been provided against receivables from customers as of February 29, 2004 and February 28, 2003, respectively.

134. Further, the Offering Memorandum stated the following regarding related-party transactions:

> The Group may loan money to and may borrow money from its affiliates, members, affiliated companies and other related parties. Interest is generally charged at prevailing market rates. The $105 million due from Refco Group Holdings, Inc., included in receivables from customers at February 28, 2003, was received by February 29, 2004.
>
> As of February 29, 2004 and February 28, 2003, the Group had a deposit with BAWAG Overseas, Inc., a third party financial institution who is a

> member, of $210 million and $175 million, respectively. These balances were included in "Receivables from customers" and liquidated shortly after each year-end.

135. These statements contained untrue statements and omissions of material facts because they failed to account for the existence of material related-party transactions and related-party indebtedness between the Company, RGHI and BAWAG, or that the reserves provided against receivables from customers as of February 29, 2004 and February 28, 2003 were grossly insufficient, given the hundreds of millions of dollars in uncollectible receivables that the Company was carrying on its books. As of February 29, 2004 and February 28, 2003, the Company had $970 million and $900 million in undisclosed uncollectible receivables, respectively, of which $720 million and $650 million, respectively, were concealed through loan transactions involving Collins and Mayer Brown.

136. Further, the Offering Memorandum stated that RGHI owed $105 million to Refco Group as of February 28, 2003, when in fact that figure would have been much larger were it not for the temporary shifting of certain RGHI debts to third parties through round trip transactions arranged by Collins and Mayer Brown just prior to the end of Refco Group's fiscal year. The Offering Memorandum also failed to disclose that the receivable from RGHI was "paid" by February 29, 2004 only because the Company had loaned RGHI several hundred million dollars through BAWAG and Customer X to facilitate that "payment." Moreover, as the SEC would later remark when reviewing a draft of the Bond Registration Statement containing a similar characterization (*see* ¶ 185 below), the inclusion of amounts due from RGHI in "receivables from customers" was inappropriate. Collins and Mayer Brown participated in the drafting and review of the Offering Memorandum and were well aware, given their representation of Refco Group and RGHI and their direct involvement in transactions to conceal the RGHI receivable,

that the descriptions of Refco Group's related party transactions and "receivables from customers" were not accurate.

137. The Offering Memorandum also mischaracterized and failed to disclose the full extent of the related-party transactions between Refco and BAWAG, by stating that the Company had "deposits" with BAWAG Overseas, Inc. (a wholly-owned BAWAG affiliate) of $210 million and $175 million as of February 29, 2004 and February 28, 2003, respectively, without disclosing any of the loan transactions referenced above.

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

138. The Offering Memorandum portrayed the Company as a rising star in the derivatives market led by a team of dedicated and talented executives. For example, the Offering Memorandum stated:

> From fiscal year 2000 through fiscal year 2004, our net revenues and EBITDA . . . have increased at a compound annual growth rate of 20.6% and 29.4%, respectively, as a result of organic growth and acquisitions. For the twelve months ended May 31, 2004 ("LTM") on a pro forma basis after giving effect to the Transactions, we generated $1,008.0 million and $269.0 million of net revenues and EBITDA, respectively.

139. The Company attributed these remarkable results to its "proven and committed management team," stating:

> We are led by a senior management team that has an average of 22 years of industry experience. Phillip Bennett, who has been with us for 23 years, became our President and CEO in 1998 and formed a new senior management team comprised of well respected industry professionals. Under the leadership of our senior management team, net revenues and EBITDA have grown at a compound annual growth rate of 20.6% and 29.4%, respectively, from fiscal year 2000 through fiscal year 2004.

140. These statements contained untrue statements of material facts because the Company's financial statements for fiscal years 2002, 2003 and 2004 materially overstated the Company's EBITDA. Thus, the Company's purported financial results in fiscal years 2000

through 2004 were not due to the "leadership" of its "proven and committed management team," but rather were the result of the failure to disclose uncollectible receivables and related-party transactions, which rendered the Company's financial results for fiscal years 2000 through 2005 materially untrue.

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

141. As discussed above, the Company incurred significant debt in connection with the 2004 recapitalization. As a result, its operations were highly leveraged. The Offering Memorandum emphasized that ready access to cash was critical to the Company's ability to service this debt:

> **To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control.**
>
> Our ability to make payments on and to refinance our indebtedness, including the notes and amounts borrowed under our senior credit facilities, and to fund our operations, will depend on our ability to generate cash in the future, which, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors beyond our control.

(Emphasis in original.)

142. Because ready access to cash was essential to its business, the Company had an interest in maintaining its high credit rating. The Offering Memorandum disclosed that a reduction in the Company's credit rating could cause a host of unwelcome problems:

> **Liquidity Risk**
>
> Ready access to cash is essential to our business. ... Our credit ratings are important to our liquidity. A reduction in our credit ratings could adversely affect our liquidity and competitive position, increase our borrowing costs, limit our access to the capital markets or trigger our obligations under certain bilateral provisions in some of our trading and collateralized financing contracts. Under such contracts, counterparties

> could terminate contracts with us or require us to post additional collateral. Termination of our trading and collateralized financing contracts could cause us to sustain losses and impair our liquidity by requiring us to find other sources of financing or to make significant cash payments or securities movements.

(Emphasis in original.)

143. The Company's ability to access cash to service its debt was of crucial importance to potential Bond investors, because the Bonds were subordinated to the Company's senior indebtedness, including $800 million in term loans and up to $75 million in borrowings that could be incurred under the revolving credit facility.

144. Because PIMCO, the PIMCO High Yield Fund, and other members of the Class understood when they purchased the Bonds that the Company's ability to make required payments on the Bonds was subject to its ability to generate sufficient cash, any facts that could affect the Company's ability to access the cash it needed to service its senior debt were of special significance to PIMCO, the PIMCO High Yield Fund, and other members the Class.

145. Accordingly, the Company and those Defendants who prepared the Offering Memorandum, including Mayer Brown and the Underwriter Defendants, took steps to assure PIMCO, the PIMCO High Yield Fund, and other members of the Class that the Company was generating sufficient cash to service its debt and, thus, would be in a position to make required payments on the Bonds. For example, the Offering Memorandum stated:

> We generate significant free cash flow afforded by high margins and a business model that allows us to grow without significant capital expenditures. For our fiscal year 2004, we generated EBITDA of $258.0 million with capital expenditures of $11.2 million. While our EBITDA has increased from $92.0 million to $258.0 million from fiscal year 2000 to 2004, our average capital expenditures were $16.0 million for the same period. In addition, our management has demonstrated its ability to operate in a leveraged capital structure by improving our leverage ratio, which we define as the ratio of long-term debt and preferred securities issued by subsidiaries to EBITDA. From fiscal year 2000 to fiscal year 2004, our total leverage ratio decreased from 4.0x to 1.5x.

146. The statements identified above contained untrue statements and omissions of material facts. The Company had severely jeopardized its credit rating and had overstated its ability to generate the cash that it needed to service its debt (and, accordingly, its ability to make the payments that would come due on the Bonds) by including untrue material statements of fact in its financial statements, and by failing to disclose the existence of hundreds of millions of dollars in uncollectible receivables and the guarantees Refco Group had given to third parties in connection with the round-trip loans. If the truth had been disclosed, it would have shown that Refco failed to comply with its minimum capital requirements and thus impaired its ability to conduct its business. In addition, the EBITDA results and leverage ratios discussed above were materially overstated because they were based on the untrue financial statements.

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

147. The Company's exposure to customer defaults further compounded the risks associated with its high degree of leverage. As the Offering Memorandum explained:

> We act on behalf of our customers for all trades consummated both on exchanges and in OTC markets. Accordingly, we are responsible for our customers' obligations with respect to these transactions, which exposes us to significant credit risk. Our customers may default on their obligations due to bankruptcy, lack of liquidity, operational failure or other reasons. A substantial part of our working capital is at risk if customers default on their obligations to us and their margin and security deposits are insufficient to meet all of their obligations. We cannot assure you that we will not be materially and adversely affected in the event of a significant default by our customers.

148. To allay potential investors' fears that these credit risks would prevent the Company from making required payments on the Bonds, the Company touted the steps it had taken to minimize the risk of customer default. In fact, the Company named its "Attractive Risk Profile" as a "Competitive Strength," stating:

> We have built a comprehensive risk management system throughout our operations to limit and monitor our exposure to customer and counterparty risk. We only undertake transactions on behalf of our customers and consequently are not exposed to market risk as a result of proprietary trading. In order to mitigate customer and counterparty risk, we implement margin technologies, mark-to-market risk management tools, internal review and executive approval procedures and rigorous risk monitoring. As a result of our risk management techniques, we have had limited credit losses resulting from our customer or counterparty defaults since fiscal year 2000, even through such recent volatile events as the terrorist attacks on September 11, 2001.

149. Further, the MD&A Section of the Offering Memorandum stated:

> As a matter of policy, we continue to upgrade our risk management procedures and systems to improve our ability to monitor actual and projected risk associated with customer positions. ... Using various stress tests, we quantify potential adverse price movements in order to determine whether such movements would adversely affect the customer's ability to pay margin. We perform frequent stress tests to our customers' positions, including intra-day trading analysis, daily equity change analysis, concentration risk analysis, position liquidity analysis and premium seller analysis. Adjustments of margin or collateral requirements are made in anticipation of unusual adverse market developments.

150. These statements contained untrue statements and omissions of material facts because, contrary to the statement that Refco was "not exposed to market risk as a result of proprietary trading," Refco had suffered significant proprietary trading losses. Additionally, contrary to the Company's espoused commitment to safeguarding itself against customer defaults, the Company had experienced significant customer defaults that were not disclosed to the investing public, and that materially impaired the Company's working capital. Further, the Company's financial statements contained untrue material statements and material omissions concerning its hundreds of millions of dollars in uncollectible debt, which was inaccurately reflected on the Company's books as a "customer receivable." This uncollectible debt, if properly disclosed, would have jeopardized the Company's credit rating and its ability to pay

down the senior indebtedness described above, and been a material fact weighed in the investment decisions of PIMCO, the PIMCO High Yield Fund, and other members of the Class.

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

151. The Company operated in a heavily regulated environment that imposed unique requirements on its business operations. Among other things, the Company was required to carry a certain amount of regulatory capital on its books as a condition of its continued operation. In fact, the Offering Memorandum acknowledged that the Company's failure to maintain adequate capital levels could be fatal to its continued existence:

> The SEC, NASD, CFTC and various other regulatory agencies have stringent rules with respect to the maintenance of specific levels of net capital by securities broker-dealers and FCMs. Our failure to maintain the required net capital could result in suspension or revocation of our registration by the SEC and our suspension or expulsion by the NASD, and could ultimately lead to our liquidation.

152. To assure potential Bond purchasers that the Company's operations were not at risk of being shut down due to failure to comply with regulatory capital requirements, the Offering Memorandum reported that the Company "maintain[ed] excess regulatory capital to provide liquidity during periods of unusual market volatility." Specifically, the Offering Memorandum stated that the Company's regulated subsidiaries, Refco LLC and Refco Securities, LLC, exceeded their minimum regulatory capital requirements by $95.6 million and $61.9 million, respectively.

153. These statements contained untrue statements of material facts because the Company's reported regulatory capital was overstated and the Company failed to disclose that Refco had given Customer X and Delta Flyer written guarantees, assuring them that Refco Group would unconditionally repay their loans to RGHI if RGHI were to default for any reason. Upon information and belief, the Company would not have satisfied its regulatory capital

requirements during the Class Period if the true facts were disclosed regarding its hundreds of millions of dollars of uncollectible receivables. To the extent the Company did maintain excess regulatory capital, the excess amounts were materially less than the figures reported in the Offering Memorandum and were not sufficient to "provide liquidity during periods of unusual market volatility," as represented in the Offering Memorandum.

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

154. In describing the Company's ownership, the notes to the financial statements contained in the Offering Memorandum stated that the Company was 90% owned by RGHI, and 10% owned by "BAWAG Overseas, Inc., a third party financial institution." This statement was materially incomplete and misleading, because the Offering Memorandum failed to disclose that BAWAG – the parent entity of BAWAG Overseas – also held a security interest in another 27% of the Company's equity by virtue of various loans by BAWAG to DF Capital and other Bennett-controlled entities.

155. As a result, investors were led to believe that BAWAG's interest in Refco was limited to 10%, when in fact it held interests in approximately 37% of the Company's equity and therefore was in a position to exercise significant influence and control over the Company. In addition, the description of BAWAG Overseas as a "third-party financial institution" was materially misleading because it failed to disclose the true extent of the business dealings and interlocking relationships between BAWAG, Refco, Bennett, RGHI and other Defendants throughout the Class Period.

2. Presentations to Ratings Agencies

156. At the same time they were preparing materials to disseminate to potential Bond investors, the Bond Underwriter Defendants, Refco, and the THL Partner Defendants were

working on presentations to Standard & Poor's ("S&P") and Moody's in an effort to achieve the best possible ratings for the 144A Bonds, and thereby to make the Bonds more attractive to investors. The Bond Underwriter Defendants – led by Credit Suisse – drafted the ratings agency presentations and played a central role in communicating with those agencies.

157. On July 12, 2004, S&P issued a "B" rating on the 144A Bonds, stating that the rating was "based on Refco's strong and well-established franchise" and its "strong and well-seasoned management team and ... good earnings track record." A week later, on July 19, 2004, Moody's assigned a "B3" rating to the 144A Bonds, stating that the rating "reflect[ed] Refco's business franchise and its operating risks" and the fact that – at least as represented by Refco – "[t]he firm takes very limited market risks and almost no unsecured credit risk." These ratings were based in significant part upon the information provided to the ratings agencies by the Bond Underwriter Defendants, Refco, and the THL Defendants.

3. The Bond Road Show

158. Defendants Bennett, Trosten and Jaeckel, together with representatives of the Bond Underwriter Defendants, led a nationwide road show in July 2004 in an effort to convince investors to purchase the Bonds (the "Bond Road Show"). The Bond Road Show was organized by the Bond Underwriter Defendants, who identified and contacted potential investors and invited them to attend. Representatives of the Bond Underwriter Defendants attended each Road Show meeting and introduced Refco's management team to investors. Those representatives varied from meeting to meeting, but included Credit Suisse representatives Joseph Molluso, Laurence Goldberg, Paul Kromwyk, Lori Finkel, Diron Jebejian and Tiffany Gallo. The Bond Road Show made stops in various cities across the United States and visited numerous institutional investors, including a visit to PIMCO's Newport Beach, California office on July 16, 2004.

159. During the Bond Road Show, Defendants Bennett, Trosten, Jaeckel and representatives of the Bond Underwriter Defendants made numerous standardized oral statements relating to the Offering Memorandum and to the Company's financial condition and results, including liberal use of the financial statements contained in the Offering Memorandum, which, as explained above, contained untrue statements of material facts.

160. Among other things, Defendants Bennett and Trosten told investors during the Bond Road Show that the Company had experienced only about $1 million in customer credit losses in the preceding five years (1999-2003), and had suffered no such losses in 1998. These statements were materially untrue and omitted to state material facts because they did not disclose the hundreds of millions of dollars in customer credit losses that the Company had suffered in 1997 and 1998, which had been hidden from the Company's books.

161. Investors were also presented with slide and/or written presentations at the Bond Road Show which, upon information and belief, were prepared by Defendants Bennett, Trosten, Jaeckel, and the Bond Underwriter Defendants [REDACTED]

162. [REDACTED] The slides also incorrectly stated that the Company had achieved EBITDA of $208 million and $256 million for fiscal years 2003 and 2004, respectively, and $269 million for the twelve months ending May 31, 2004. These figures were materially untrue because of Defendants' failure to write off hundreds of millions of dollars in losses and uncollectible receivables, inappropriate shifting of expenses from Refco to RGHI, recording of bogus income on Refco's books, and failure to disclose that Refco had given Customer X and Delta Flyer written guarantees, assuring them that Refco Group would unconditionally repay their loans to RGHI if RGHI were to default for any reason. The Bond Road Show slides similarly contained statements regarding the Company's revenues, pre-tax operating income, and leverage that were untrue for the same reasons they were untrue in the Offering Memorandum.

163. Based on feedback received at the Bond Road Show, as well as the ratings given to the 144A Bonds by Moody's and S&P, the Bond Underwriter Defendants – together with Refco management and representatives of the THL Partner Defendants – determined the pricing of the 144A Bonds. [REDACTED]

164. In reliance on the information received during the Bond Road Show, the information contained in the Offering Memorandum (including the untrue financial statements contained therein, which, as set forth above, contained untrue statements of material fact), and the Company's commitment to complete the Exchange Offer, PIMCO, the PIMCO High Yield Fund, and numerous other institutional investors purchased the 144A Bonds.

4. The Bond Registration Statement

165. Pursuant to the Registration Rights Agreement, the Company filed a Form S-4 Registration Statement with the SEC on October 12, 2004, which was subsequently amended through Form S-4/A filings dated December 10, 2004; January 12, 2005; February 23, 2005; March 11, 2005; April 5, 2005; and April 6, 2005 (collectively, the "Bond Registration Statement"). The filing of the Bond Registration Statement allowed for the exchange of the 144A Bonds for Registered Bonds, as originally contemplated in the Offering Memorandum.

166. The Bond Registration Statement became effective, and Registered Bonds were issued pursuant thereto, on or about April 13, 2005. The Exchange Offer remained open until May 10, 2005, at which time PIMCO and the PIMCO High Yield Fund exchanged their 144A Bonds for Registered Bonds.

167. The co-issuers of the Registered Bonds were Refco Group and its wholly-owned subsidiary, Refco Finance. Additionally, there were a number of co-registrants for the Registered Bonds, including, among others, Lind-Waldock, Refco Futures, and Westminster-Refco.

168. Defendant Bennett signed the Bond Registration Statement on behalf of Refco Group. In addition, Defendants Sherer, Murphy, Sexton, Maggio, Silverman and Klejna (through their attorney-in-fact Defendant Bennett) signed the Bond Registration Statement on behalf of Refco Group. Other signatories on the Bond Registration Statement included Refco Finance (through Bennett and Silverman), Lind-Waldock (through Bennett and Silverman), Refco Futures (through Bennett, Silverman and Murphy), and Westminster-Refco (through Bennett, Silverman and Murphy).

169. The Offering Memorandum was used as the foundation for preparing the Bond Registration Statement, and, therefore, the two documents were substantially similar in content. This fact was understood and expected by the parties that prepared the Offering Memorandum, including Mayer Brown and the Bond Underwriter Defendants, and thus those parties knew when they were preparing the Offering Memorandum that they were also preparing statements which would be repeated in the Bond Registration Statement.

170. The Bond Underwriter Defendants, Collins, and Mayer Brown also participated in the preparation of the Bond Registration Statement itself. The drafting of the Bond Registration Statement was an iterative process, involving several rounds of comments from the SEC staff and responsive changes by Refco. It was only after six amendments to the Bond Registration Statement that the SEC was satisfied with the disclosures and the Bond Registration Statement became effective. The Bond Underwriter Defendants and Mayer Brown received and reviewed the SEC comment letters and the amendments of the Bond Registration Statement that addressed those comments, and participated in drafting sessions for amendments of the Bond Registration Statement. Moreover, the amendment of the Bond Registration Statement occurred hand-in-hand with the preparation of the IPO Registration Statement, and Mayer Brown (which

represented Refco in connection with the IPO) and the Bond Underwriter Defendants (which were also underwriters and joint bookrunners of the IPO) participated in both processes simultaneously.

171.

172. Drafts of Refco's response to the SEC's November 10 comment letter and of Amendment No. 1 to the Bond Registration Statement were circulated to the Bond Underwriter Defendants in early December 2004.

173. Among other comments, Cravath suggested that the description of Refco's credit risk be supplemented with examples of events that had given rise to the Company's reserves against receivables from customers, such as the Asian economic crisis. Cravath's comments on the Bond Registration Statement also make reference to Cravath's having participated in an earlier drafting session for that document on behalf of the Bond Underwriter Defendants.

174. On December 9, 2004, following the drafting session, another draft was circulated which Cravath again reviewed and heavily edited on behalf of the Bond Underwriter Defendants, including making significant revisions to the MD&A section.

175.

176.

177.

Those comments included significant revisions and edits.

178. On or about February 23, 2005, Refco filed a third amendment to the Bond Registration Statement, incorporating the comments received from the Bond Underwriter Defendants' counsel, as modified by CSFB.

179.

180.

181. The final Bond Registration Statement, which was filed on or about April 6, 2005, contained material untrue statements substantially similar to those set forth above from the Offering Memorandum, including but not limited to the statements set forth in ¶¶ 132-153 above

regarding the Company's reserves for customer receivables, its purported non-participation in proprietary trading, and its maintenance of "excess regulatory capital." These statements were untrue for the same reasons as in the Offering Memorandum. In particular, like the Offering Memorandum, the Bond Registration Statement failed to disclose either the existence of the multi-hundred million dollar receivable owed by RGHI to Refco, or the round-trip "loan" transactions whereby that receivable had been removed from Refco's books at the end of its financial reporting periods.

182. The Bond Registration Statement contained the Company's audited financial statements for fiscal years 2003 and 2004, as well as Grant Thornton's audit report thereon. In the original Form S-4 filed on October 12, 2004, these audited financial statements and audit opinion were identical to those in the Offering Memorandum, and contained untrue statements of material facts for the same reasons.

183. In the amendments to the Form S-4, although the figures for net income, total assets, and members' equity were the same as in the Offering Memorandum, different figures were reported for certain line items on the financial statements, including, but not limited to, cash and cash equivalents; receivables from customers; payables to customers; total revenues (as well as all component items of total revenues); and general, administrative and other expenses. In the December 2004 and subsequent amendments of the Bond Registration Statement, the Company reported customer receivables of $1,591,385,000 and $1,490,380,000 for fiscal years 2004 and 2003, respectively (net of $65.2 million and $42.7 million in reserves, respectively); and $170,415,000 and $142,585,000 in general, administrative and other expenses for those periods, respectively. In addition, the December 2004 and subsequent amendments of the Bond

Registration Statement reflect $210 million and $280 million in receivables from equity members, whereas the Offering Memorandum and the original Form S-4 disclosed none.

184. The audited financial statements in the amendments to the Bond Registration Statement, though different from those in the Offering Memorandum, contained untrue statements of material facts for the same reasons as those in the Offering Memorandum, including the failure of the Company to disclose that Refco had given Customer X and Delta Flyer written guarantees, assuring them that Refco Group would unconditionally repay their loans to RGHI if RGHI were to default for any reason. Specifically, the reported results for members' equity and net income were materially overstated, while the reported results for general, administrative and other expenses (which includes allowances for doubtful accounts) were materially understated.

185. The related-party disclosures in the amendments to the Bond Registration Statement also contained untrue statements of material facts. Specifically, the related-party disclosures in the amendments to the Bond Registration Statement stated:

> The Group may loan money to and may borrow money from its affiliates, members, affiliated companies and other related parties. Interest is generally charged at prevailing market rates. ***The $105.3 million due from Refco Group Holdings, Inc., included in "Receivables from equity members" at February 28, 2003, was received by February 29, 2004.***
>
> As of February 29, 2004 and February 28, 2003, the Group had a deposit with BAWAG Overseas, Inc., a third party financial institution who is a member, of $210.2 million and $175.2 million, respectively. ***These balances were also included in "Receivables from equity members" and liquidated shortly after each year-end.***

(Emphasis added.) Thus, the same receivables that were characterized as "receivables from customers" in the Offering Memorandum had been recharacterized in the Bond Registration Statement as "receivables from equity members." This change was a result of the SEC's November 10, 2004 comment letter on the Company's October 12, 2004 draft of the Bond

Registration Statement, wherein the SEC questioned why amounts due from equity members (including RGHI) were being characterized as receivables from customers. Collins received a copy of the SEC's comment letter no later than November 11, 2004, the day after it was released. Collins and Mayer Brown, given their intimate knowledge of these receivables, knew or recklessly disregarded well before the SEC reviewed the Bond Registration Statement that those receivables were not customer receivables, yet they had reviewed and given their approval to the Offering Memorandum, which characterized them as customer receivables. Certainly after learning of the SEC's comments and the resulting change in this language, they were aware that the RGHI receivable was being mischaracterized.

186. Even as modified based on the SEC's comments, the related-party disclosures in the Bond Registration Statement contained untrue statements and omissions of material facts because Defendants failed to disclose the existence and full extent of the related-party transactions and the related-party indebtedness between the Company, RGHI and BAWAG described herein. Further, the Bond Registration Statement failed to disclose the Refco Group guarantees to Customer X and Delta Flyer, or the fact that the receivable from RGHI was "paid" by February 29, 2004 only because the Company had loaned RGHI several hundred million dollars through BAWAG and Customer X to facilitate that "payment" (which was unwound a few days later).

187. Despite the differences in the financial statements and disclosures contained in the October 12, 2004 Form S-4 filing and the subsequent amendments of the Bond Registration Statement, the same audit report from Grant Thornton, dated October 8, 2004, accompanied each. The audit report in the Bond Registration Statement, which was included with Grant Thornton's consent, contained untrue statements of material facts for the same reasons as set

forth above with respect to the audit report in the Offering Memorandum, namely, it inaccurately represented that Grant Thornton conducted its audits in accordance with GAAS and that the Company's financial statements "present[ed] fairly, in all material respects, the financial position of [the Company] … in conformity with accounting principles generally accepted in the United States of America."

188. The Notes To Consolidated Financial Statements in the Bond Registration Statement contained the following disclosures concerning customer receivables and payables:

> Receivables from customers at each year end are as follows:

	2004	2003
	(in thousands)	
Futures transactions	$ 212,299	$ 209,629
Foreign currency and other OTC derivative transactions	38,724	364,711
Securities transactions	1,340,362	916,040
	$ 1,591,385	$ 1,490,380

***

> These receivables are generally collateralized with marketable securities. The Group's allowance for doubtful accounts is based upon management's continuing review and evaluation of factors such as collateral value, aging and the financial condition of the customers. The allowance is assessed to reflect best estimate of probable losses that have been incurred as of the balance sheet date. Any changes are included in the current period operating results. The Group pursues collection of these receivables through various means, including legal action and collection agencies, and generally does not charge-off any of these receivables. Reserves of $65.2 million and $42.7 million have been provided against receivables from customers as of February 29, 2004 and February 28, 2003, respectively.

189. These disclosures omitted to state material facts, because they failed to disclose that the reserves provided against receivables from customers as of February 29, 2004 and February 28, 2003 were grossly insufficient, given the (at least) $900 million in uncollectible

receivables – amounting to nearly half of the Company's reported receivables – that the Company was carrying on its books. They also failed to disclose that Refco had given Customer X and Delta Flyer written guarantees, assuring them that Refco Group would unconditionally repay their loans to RGHI if RGHI were to default for any reason.

190. The Bond Registration Statement also contained unaudited financial information relating to periods post-dating the Offering Memorandum. Specifically, the Company reported that it had incurred general, administrative and other expenses in the amounts of $97 million and $76 million for the periods from March 1, 2004 through August 5, 2004 and from August 6, 2004 through November 30, 2004, respectively; that it had earned net income of $98 million and $43 million in those same periods, respectively; and that it had members' equity of $127 million as of November 30, 2004.

191. Further, the Company provided Unaudited Pro Forma Consolidated Statements of Income for fiscal year 2004, and for the nine months ended November 30, 2004. The Unaudited Pro Forma Consolidated Statements of Income treated the Bond Offering and related transactions as if they had occurred on March 1, 2003. For fiscal year 2004, the Bond Registration Statement reflected, on a pro forma basis, general, administrative and other expenses of $190,323,000 and net income of $114,769,000. For the nine months ended November 30, 2004, the Bond Registration Statement reflected, on a pro forma basis, general, administrative and other expenses of $181,015,000 and net income of $105,478,000.

192. The pro forma financial data contained in the Bond Registration Statement was based on the Company's misstated financial results and, therefore, contained untrue statements of material facts for the same reasons the Company's financial results contained untrue statements of material facts.

193. In addition to the admissions of Refco and the THL Partner Defendants and other evidence concerning the financial statements in the Offering Memorandum discussed above, Lead Plaintiffs' investigation has revealed that the additional financial statements contained in the Bond Registration Statement contained materially untrue statements and omissions of material fact because:

(a) For a fourteen-day period bracketing August 31, 2004, the final day of Refco's second quarter for fiscal year 2005, a receivable from RGHI to Refco in the amount of $485,000,000 was temporarily replaced with a receivable in the amount of $485,000,000 from Customer X; and

(b) For an eight-day period bracketing November 30, 2004, the final day of Refco's third quarter for fiscal year 2005, a receivable from RGHI to Refco in the amount of $545,000,000 was temporarily replaced with a receivable in the amount of $545,000,000 from Customer X.

194. Based on the untrue statements in the Bond Registration Statement, the issuers were able to consummate the Exchange Offer and exchange Registered Bonds for the outstanding 144A Bonds. Had the issuers been unable to have the Bond Registration Statement declared effective by the SEC, they would have been unable to consummate the Exchange Offer, and the holders of the 144A Bonds would have been entitled to receive an increased rate of interest on their bonds.

E. The August 2005 Initial Public Offering

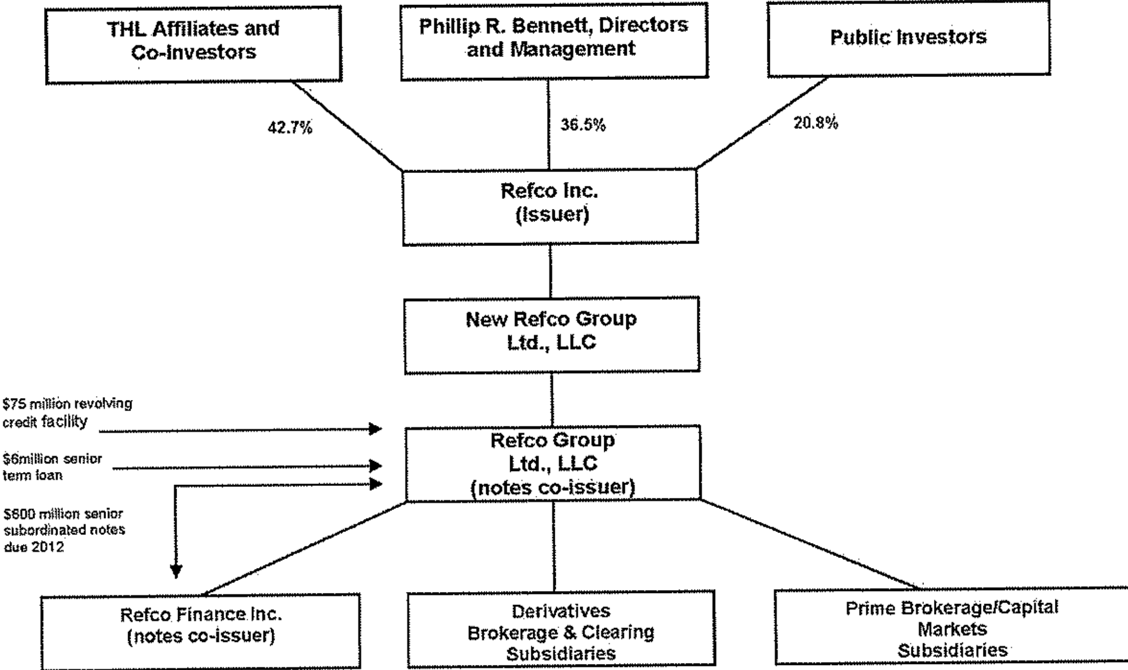
195. With the consummation of the LBO and the successful Bond Offering under their belts, Refco's insiders (which included the THL Defendants) were perfectly positioned to cash out by taking the Company public. On or about August 10, 2005, Refco sold approximately 20% of its shares to RH Capital and other members of the Class in the IPO. Defendants Credit Suisse,

Goldman Sachs, and BAS acted as Joint Book-Running Mangers of the IPO. Defendants Deutsche Bank, J.P. Morgan, Sandler O'Neill, and HSBC acted as Co-Managers of the IPO. Defendants William Blair, Harris Nesbitt, CMG, Ramirez & Co., Seibert & Co., Williams Capital, and Utendahl acted as underwriters of the IPO.

196. To market the IPO to investors, Refco's management conducted an extensive road show – arranged by the Stock Underwriter Defendants – [redacted]

[redacted].

197. In order to issue stock to the investing public, Refco formed a new holding company. The chart below (taken from the IPO Prospectus) summarizes the structure of the Company upon completion of the IPO:



1. The IPO Registration Statement

198. In the IPO, Refco offered approximately $670 million worth of stock to the investing public as follows: (1) 26,500,000 shares as part of the initial IPO, and (2) an additional 3,975,000 shares issued pursuant to an option (known as the "green shoe option") granted to the Stock Underwriter Defendants by Refco to cover over-subscriptions of shares. The IPO was conducted pursuant to a Form S-1 registration statement dated April 8, 2005, a Form-S-1/A registration statement dated May 27, 2005, a Form S-1/A registration statement dated July 1, 2005, a Form S-1/A registration statement dated July 20, 2005, a Form S-1/A registration statement dated July 25, 2005, a Form S-1/A registration statement dated August 8, 2005, a Form S-1/A registration statement dated August 10, 2005, and a Form 424B1 prospectus dated August 10, 2005 (the "IPO Prospectus" or the "Prospectus") (collectively, the "IPO Registration Statement"), which were filed with the SEC.

199. Defendants Bennett, Sherer, Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley, and Schoen signed the IPO Registration Statement.

200. The Underwriter Defendants played a central role in the drafting of the IPO Registration Statement. According to the organizational materials for the IPO that were prepared by Credit Suisse, Goldman Sachs and BAS, the Underwriter Defendants shared "principal drafting" responsibility for numerous sections of the IPO Registration Statement, including the Prospectus Summary, the Risk Factors, the Selected Financial Data, and the MD&A.

201. Collins and Mayer Brown likewise were directly involved in reviewing and drafting the IPO Registration Statement, and the IPO Registration Statement specifically disclosed that Mayer Brown acted as counsel to Refco in connection with the transactions. According to the Examiner's Report, Mayer Brown (through Collins) "received and presumably

reviewed the SEC's comments [to the initial S-4 and S-1 filings], Weil's responses, the SEC's replies, and the amended S-1s."

202. The IPO Registration Statement includes the Company's audited financial statements for fiscal years 2003, 2004, and 2005, which were prepared with substantial assistance and participation by Grant Thornton. These audited financial statements include the Company's audited consolidated statements of income, statement of changes in members' equity and consolidated statements of cash flows, as of February 28, 2005, February 29, 2004, and February 28, 2003, and the Company's audited consolidated balance sheet as of February 28, 2005 and February 29, 2004.

203. As set forth below, the IPO Registration Statement pursuant to which RH Capital and other members of the Class were induced to purchase Refco stock contained a number of untrue statements of material facts and omitted to state material facts required therein or necessary to make the statements therein not misleading. In particular, like the Offering Memorandum for the Bonds and the Bond Registration Statement, the IPO Registration Statement failed to disclose the existence of the multi-hundred million dollar receivable owed by RGHI to Refco, or the round-trip "loan" transactions by which that receivable was systematically removed from Refco's books at the end of its financial reporting periods.

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

204. The IPO Registration Statement contained financial statements and other statements regarding the Company's financial performance that purported to demonstrate the Company's soundness, but which in reality contained untrue statements of material facts and omitted to state material facts required therein or necessary to make the statements therein not misleading. These statements were made in several contexts, including (1) in the audited

financial statements included in the IPO Registration Statement; (2) in the discussion of certain historical consolidated financial data derived from Refco's audited consolidated financial statements; (3) in the unaudited financial statements included in the IPO Registration Statement; (4) in the discussion of certain historical consolidated financial data derived from Refco's unaudited consolidated financial statements; and (5) in statements made in the MD&A and other textual portions of IPO Registration Statement.

205. Refco's Consolidated Balance Sheets, as audited and certified by Grant Thornton and as included in the IPO Registration Statement, stated that the Company had receivables from customers (net of $61,190,000 in reserves) of $2,081,968,000 and $1,591,385,000 (net of $65,200,000 in reserves) for fiscal years 2005 and 2004, respectively; total assets of $48,765,349,000 and $33,332,172,000 for fiscal years 2005 and 2004, respectively; and members' equity of $150,250,000 and $616,084,000 for fiscal years 2005 and 2004, respectively.

206. Refco's Consolidated Statements of Income contained in the IPO Registration Statement reported that the Company had net income of $176,287,000, $187,156,000 and $140,119,000 for fiscal years 2005, 2004, and 2003, respectively; and general, administrative and other expenses of $243,546,000. $170,415,000 and $142,585,000 for fiscal years 2005, 2004, and 2003, respectively.

207. Grant Thornton gave its written consent to the incorporation of its audit opinion on the Company's fiscal years 2003, 2004, and 2005 financial statements into the IPO Registration Statement. In the audit opinion, Grant Thornton certified that those financial statements had been prepared in accordance with GAAP. Grant Thornton's report stated:

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Members of
New Refco Group Ltd., LLC

We have audited the accompanying consolidated balance sheet of New Refco Group Ltd., LLC (the "Successor" or "Company") (a Delaware limited liability company) and subsidiaries as of February 28, 2005 and the related consolidated statements of income, changes in members' equity and cash flows for the period from August 6, 2004 through February 28, 2005....

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement...

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of New Refco Group Ltd., LLC and subsidiaries as of February 28, 2005, and the results of their operations and their cash flows for the period from August 6, 2004 through February 28, 2005 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note H(1)(i), the notes to the consolidated financial statements have been restated to include summarized financial information related to a significant equity method investment.

Grant Thornton LLP
New York, New York
May 24, 2005 (except for Note H(1)(i) as to which the date is
July 19, 2005)

In a second audit opinion letter incorporated in the IPO Registration Statement, Grant Thornton gave the same opinion regarding the Company's financial statements for Refco's consolidated balance sheet as of February 29, 2004 and the related consolidated statements of income, changes in the members' equity and cash flows for the period from March 1, 2004 through August 5, 2004 and for fiscal years 2003 and 2004.

208. In addition to the financial statements audited by Grant Thornton, the IPO Registration Statement presented certain historical consolidated financial data derived from the Company's audited consolidated financial statements for fiscal years 2002, 2003, 2004, and 2005, including the information set forth in the following chart (in millions):

	FY 2002	FY 2003	FY 2004	FY 2005
Total Assets	$22,611	$19,215	$33,332	$48,765
Members Equity	$515	$566	$616	$150

209. The IPO Registration Statement also included the Company's unaudited financial statements for the three month periods ending May 31, 2005 and May 31, 2004. These unaudited financial statements included the Company's consolidated balance sheets for the three months ended May 31, 2005, and its consolidated statements of income, consolidated statements of changes in members' equity and consolidated statements of cash flows for the three months ended May 31, 2005 and May 31, 2004. The unaudited financial statements included in the IPO Registration Statement stated that Refco had:

(a) Total assets of $74,317,191,000 for the three months ended May 31, 2005;

(b) Members' equity of $185,427,000 and $671,100,000 for the three months ended May 31, 2005 and May 31, 2004, respectively;

(c) Receivables from customers of $1,807,446,000 (net of reserves of $62,107,000) and $2,081,968,000 (net of reserves of $61,190,000) for the three months ended May 31, 2005 and fiscal year 2005, respectively; and

(d) Net income of $42,587,000 and $59,270,000 for the three months ended May 31, 2005 and May 31, 2004, respectively.

210. The IPO Registration Statement also included Unaudited Pro Forma Consolidated Statements of Income for the year ended February 28, 2005 and the three months ended May 31, 2005. The Unaudited Pro Forma Consolidated Statements of Income treated the Bond Offering and related transactions as if they had occurred on March 1, 2004. For fiscal year 2005, the IPO Registration Statement reflected, on a pro forma basis, general, administrative and other expenses of $247,239,000 and net income of $105,681,000. For the three months ended May 31, 2005, the IPO Registration Statement reflected, on a pro forma basis, general, administrative and other expenses of $61,456,000 and net income of $31,920,000.

211. Further, the IPO Registration Statement included an Unaudited Pro Forma Consolidated Balance Sheet as of May 31, 2005. The Unaudited Pro Forma Consolidated Balance Sheet treated the Bond Offering and related transactions as if they had occurred on May 31, 2005. As of May 31, 2005, the IPO Registration Statement reflected, on a pro forma basis, receivables from customers (net of reserves) of $1,807,446,000; total assets of $74,413,468,000; and members' equity of $491,704,000.

212. In addition, the IPO Registration Statement included financial information derived from the Company's unaudited consolidated financial statements for fiscal year 2001. For example, the IPO Registration Statement reported that the Company had net income of $72 million; total assets of $18,277 million; and members' equity of $500 million for that fiscal year.

213. The IPO Registration Statement also included a significant amount of financial information set forth in the textual portions of the IPO Prospectus, including the MD&A section. For instance, the IPO Prospectus stated: "[F]or the year ended February 28, 2005, we generated … $176.3 million of net income and for the three months ended May 31, 2005, we generated …

$42.6 million of net income." The Prospectus also makes the following statements, among others, regarding the Company's financial results and business operations:

(a) "operating profit has increased from $61.0 million in fiscal year 2000 to $150.6 million in fiscal year 2005, a compound annual growth rate of 19.8%";

(b) "Derivatives Brokerage & Clearing Operating profit for the three months ended May 31, 2005 decreased $5.4 million, or 13.2%, to $35.5 million from $40.9 million for the three months ended May 31, 2004."

(c) "Prime Brokerage/Capital Markets operating profit for the three months ended May 31, 2005 increased $18.5 million, or 58.5%, to $50.1 million from $31.6 million for the three months ended May 31, 2004."

214. In addition, the IPO Registration Statement included certain information regarding Refco's purported compliance with its credit covenants, including the statement that the Company's Consolidated EBITDA for the twelve months ended May 31, 2005 was $296,747,000 and that its Actual Leverage Ratio was 3.03x.

215. These statements were materially untrue because Refco failed to disclose the existence of hundreds of millions of dollars worth of uncollectible receivables, losses and related-party transactions, and failed to disclose that Refco had given Customer X a written guarantee, signed by Bennett, assuring Customer X that Refco Group would unconditionally repay RGHI's various loans from Customer X if RGHI were to default for any reason. Among other things, the reported results for receivables from customers, net assets, members' equity, net income and EBITDA discussed above were materially overstated, and the reported results for general, administrative and other expenses (which includes allowances for doubtful accounts) were materially understated. Further, the pro forma financial statements were based on the

Company's misstated financial results and, therefore, contained untrue statements of material facts for the same reasons the Company's financial results contained untrue statements of material facts. On October 10, 2005, Refco admitted that, because of this uncollectible receivable and the undisclosed related-party transactions, the Company's financial statements for fiscal years 2002, 2003, 2004, 2005 and the quarter ended May 31, 2005, each of which was included in the IPO Registration Statement, could no longer be relied upon. The THL Partner Defendants have likewise admitted in the THL Complaint that the Company's financial statements for each of these periods contained untrue statements of material facts.

216. In addition to the foregoing admissions of Refco and the THL Partner Defendants, Lead Plaintiffs have gathered substantial evidence concerning the scope of the untrue statements in the financial statements contained in the IPO Registration Statement. As describe above, Lead Plaintiffs have reviewed documents and conducted witness interviews relating to several sets of transactions between Refco and third-party customers of Refco and/or BAWAG, which show, among other things, that the financial statements and description of the Company's historical performance contained in the IPO Registration Statement contained material statements and omissions of material fact because:

(a) For a twelve-day period bracketing February 28, 2000, the final day of Refco's fiscal year 2000, a receivable from RGHI to Refco in the amount of $610,000,000 was temporarily replaced with (1) a receivable in the amount of $300,000,000 from BAWAG, (2) a receivable in the amount of $150,000,000 from CIM Ventures, (3) a receivable in the amount of $110,000,000 from CS Land, and (4) a receivable in the amount of $50,000,000 from EMF;

(b) For a twelve-day period bracketing February 28, 2001, the final day of Refco's fiscal year 2001, a receivable from RGHI to Refco in the amount of $750,000,000 was temporarily replaced with (1) a receivable in the amount of $250,000,000 from CIM Ventures, (2) a receivable in the amount of $300,000,000 from BAWAG, and (3) a receivable in the amount of $200,000,000 Delta Flyer;

(c) For a twelve-day period bracketing February 28, 2002, the final day of Refco's fiscal year 2002, a receivable from RGHI to Refco in the amount of $925,000,000 was temporarily replaced with (1) a receivable in the amount of $325,000,000 from Customer X, (2) a receivable in the amount of $300,000,000 from BAWAG, (3) a receivable in the amount of $175,000,000 from Delta Flyer, and (4) a receivable in the amount of $125,000,000 from Beckenham;

(d) For a sixteen-day period bracketing February 28, 2003, the final day of Refco's fiscal year 2003, a receivable from RGHI to Refco in the amount of $900,000,000 was temporarily replaced with (1) a receivable in the amount of $500,000,000 from Customer X, (2) a receivable in the amount of $250,000,000 from BAWAG, and (3) a receivable in the amount of $150,000,000 from Delta Flyer;

(e) For a seventeen-day period bracketing February 29, 2004, the final day of Refco's fiscal year 2004, a receivable from RGHI to Refco in the amount of $970,000,000 was temporarily replaced with (1) a receivable in the amount of $720,000,000 from Customer X; and (2) a receivable in the amount of $250,000,000 from BAWAG;

(f) For a twelve-day period bracketing May 31, 2004, the final day of Refco's first quarter for fiscal 2005, a receivable from RGHI to Refco in the amount of

$700,000,000 was temporarily replaced with a receivable in the amount of $700,000,000 from Customer X;

(g) For a fourteen-day period bracketing August 31, 2004, the final day of Refco's second quarter for fiscal 2005, a receivable from RGHI to Refco in the amount of $485,000,000 was temporarily replaced with a receivable in the amount of $485,000,000 from Customer X;

(h) For an eight-day period bracketing November 30, 2004, the final day of Refco's third quarter for fiscal 2005, a receivable from RGHI to Refco in the amount of $545,000,000 was temporarily replaced with a receivable in the amount of $545,000,000 from Customer X;

(i) Between December 30, 2004 and January 4, 2005, a receivable from RGHI to Refco in the amount of $550,000,000 was temporarily replaced with a receivable in the amount of $550,000,000 from Customer X;

(j) For a sixteen-day period bracketing February 28, 2005, the final day of Refco's fiscal year 2005, a receivable from RGHI to Refco in the amount of $595,000,000 was temporarily replaced with (1) a receivable in the amount of $345,000,000 from Customer X, and (2) a receivable in the amount of $250,000,000 from BAWAG; and

(k) For a twelve-day period bracketing May 31, 2005, the final day of Refco's first quarter for fiscal year 2006, a receivable from RGHI to Refco in the amount of $450,000,000 was temporarily replaced with a receivable in the amount of $450,000,000 from Customer X.

217. Defendant Grant Thornton's statements that it had "conducted [its] audits in accordance with the auditing standards generally accepted in the United States of America" and that "the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Refco Group Ltd., LLC and its subsidiaries as of February 28, 2005, and the results of their operations and their cash flows for the period from August 6, 2004 through February 28, 2005 in conformity with accounting principles generally accepted in the United States of America" also constituted untrue statements of material facts. Grant Thornton's second audit opinion letter gave the same opinion regarding the Company's financial statements for Refco's consolidated balance sheet as of February 29, 2004 and the related consolidated statements of income, changes in the members' equity and cash flows for the period from March 1, 2004 through August 5, 2004 and for fiscal years 2003 and 2004. Grant Thornton, as set forth more fully below, had not conducted its audits in accordance with GAAS. Further, the Company's financial statements for the periods mentioned above and the results of its operations and cash flows for those same periods did not present fairly, in all material respects, the Company's financial position in accordance with GAAP.

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

218. To assure investors that the Company was sound, the IPO Registration Statement stated that the Company had adequately accounted for doubtful accounts and related-party transactions. With respect to receivables from and payable to customers, the Notes to the Company's Consolidated Financial Statements state:

> **Receivables from and payable to customers**
>
> These balances primarily pertain to margin and open contractual commitments related to customers' futures, foreign currency forward and

securities transactions. Receivables from and payable to customers in connection with futures and foreign currency forward transactions include gains and losses on open futures, options and forward contracts. Receivables from and payable to customers in connection with securities transactions include amounts due on cash and margin transactions.

* * *

The Group's allowance for doubtful accounts is based upon management's continuing review and evaluation of factors such as collateral value, aging and the financial condition of the customers. The allowance is assessed to reflect best estimate of probable losses that have been incurred as of the balance sheet date. Any changes are included in the current period operating results. The Group pursues collection of these receivables through various means, including legal action and collection agencies. Reserves of $61.2 million and $65.2 million have been provided against receivables from customers as of February 28, 2005 and February 29, 2004, respectively. The Group generally nets receivables and payables related to its customers' futures, foreign currency forwards and securities transactions on a counterparty basis pursuant to master netting agreements. Where possible, it is the Group's policy to settle these transactions on a net basis with its counterparties.

(Emphasis in original.)

219. In addition, the MD&A section of the IPO Registration Statement provided:

Receivables from Customers-Provisions for Doubtful Accounts. Our receivables are generally collateralized with marketable securities. For some customer receivables that are not fully secured, we establish reserves for doubtful accounts when, in the opinion of management, such reserves are appropriate. We have established reserves of $61.2 million and $65.2 million against receivables from customers as of February 28, 2005 and February 29, 2004, respectively. Our allowance for doubtful accounts is based upon management's continuing review and evaluation of the factors such as collateral value, aging and the financial condition of our customers. The allowance is assessed to reflect best [sic] estimate of probably losses that have been incurred as of the balance sheet date.

(Emphasis in original.)

220. Further, the Prospectus included the following statement regarding related-party transactions:

> The Group may loan money to and may borrow money from its affiliates, members, affiliated companies and other related parties. Interest is generally charged at prevailing market rates.
>
> As of February 29, 2004, the Group had a deposit with BAWAG Overseas, Inc., a third-party financial institution who was a member, of $210.2 million. This balance was also included in "Receivables from Customers" and liquidated shortly after each year-end.

221. These statements were untrue and omitted material facts because they failed to disclose the existence of the related-party transactions or the related-party indebtedness between the Company, RGHI and BAWAG. Although early versions of the Form S-1 had included the $105 million receivable from RGHI that had been reflected in the Offering Memorandum and Bond Registration Statement, and had characterized that receivable as being owed by "equity members," the final IPO Registration Statement omitted any reference to that receivable. Collins and Mayer Brown, who participated in the drafting and review of the IPO Registration Statement, knew or recklessly disregarded that RGHI owed the Company not only $105 million but substantially more, yet that receivable was not disclosed.

222. The IPO Registration Statement also failed to disclose that Refco had given Customer X a written guarantee, signed by Bennett, assuring Customer X that Refco Group would unconditionally repay RGHI's various loans from Customer X if RGHI were to default for any reason, or that the reserves provided against receivables from customers as of February 28, 2005 and February 29, 2004 were grossly insufficient given the hundreds of millions of dollars of uncollectible receivables that the Company was carrying on its books. As of February 28, 2005 and February 29, 2004, the Company had $345 million and $970 million in undisclosed uncollectible receivables, respectively, of which the entire $345 million for 2005 and $720 million for the preceding year were removed from Refco's books through round-trip "loan" transactions involving Mayer Brown.

223. The IPO Registration Statement also mischaracterized and failed to disclose the full extent of the related-party transactions between Refco and BAWAG, by stating that the Company had a "deposit" with BAWAG Overseas, Inc. of $210.2 million as of February 29, 2004, without disclosing any of the transactions referenced above.

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

224. The IPO Registration Statement explained Refco's exposure to customer and counter-party risks as follows:

> We are exposed to the risk that third parties that owe us money, securities or other assets will not perform their obligations. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. As a clearing broker, we generally bear the risk of the defaults or misconduct of our customers. In addition, we have experienced, due to competitive factors, pressure to extend credit and to price more aggressively the credit risks we take. Although we regularly review credit exposures to specific customers and counterparties and to specific industries, countries and regions that we believe may present credit concerns, default risk may arise from events or circumstances that are difficult to detect or foresee. In addition, concerns about, or a default by, one institution could lead to significant liquidity problems, losses or defaults by other institutions, which in turn could adversely affect us.

225. To allay potential investors' concerns over these potential risks, the IPO Registration Statement touted the Company's supposed ability to "manage risk prudently," stating: "We plan to continue to monitor and improve our exposure to customer and counterparty risk throughout our operations using our comprehensive risk management system." In addition, the IPO Registration Statement stated:

> As a matter of policy, we continue to upgrade our risk management procedures and systems to improve our ability to monitor actual and projected risk associated with customer positions. Our Global Risk Management department is responsible for the systematic review of customer exposure in both regulated and nonregulated markets. Our

current system provides the ability to project the impact of market volatility on price movement.

226. These statements contained untrue statements and omissions of material facts because, contrary to the Company's espoused commitment to safeguarding itself against customer defaults, the Company had experienced significant customer defaults which were not disclosed to the investing public, and failed to disclose that Refco had given Customer X a written guarantee, signed by Bennett, assuring Customer X that Refco Group would unconditionally repay RGHI's various loans from Customer X if RGHI were to default for any reason, and which materially impaired the Company's working capital. Further, the Company's financial statements contained untrue material statements and material omissions concerning its hundreds of millions of dollars in uncollectible debt. This uncollectible debt, if properly disclosed, would have jeopardized the Company's credit rating and its ability to pay down the senior indebtedness described above, and been a material fact weighed in the investment decisions of RH Capital and other members of the Class.

(d) The IPO Registration Statement Misrepresented That <u>The Company Maintained Excess Regulatory Capital</u>

227. The IPO Registration Statement disclosed:

> We are extensively regulated by the Commodity Futures Trading Commission; the SEC; the National Association of Securities Dealers, our designated self-regulatory organization with respect to our registration as a broker-dealer; the Chicago Mercantile Exchange, our designated self-regulatory organization with respect to our registration as a Futures Commission Merchant; the National Futures Association; other exchanges of which we are a member; state regulatory agencies; and other domestic and foreign clearing organizations. If we fail to comply with applicable laws, rules or regulations, we may be subject to criminal conviction, increased reporting requirements, censure, fines, cease-and-desist orders, suspension of our business, removal of personnel, civil litigation or other sanctions, including revocation of our operating licenses.

228. To assure potential stock purchasers that the Company was complying with

regulatory capital requirements, the IPO Registration Statement stated that "[a]s a matter of policy, we maintain excess regulatory capital to provide liquidity during periods of unusual market volatility, and this has been sufficient in the past to absorb volatile market events."

229. The IPO Registration Statement also stated: "[A]s of May 31, 2005, Refco, LLC had net capital of $354.5 million, which was $167.7 million in excess of required net capital . . . As of May 31, 2005, Refco Securities, LLC had net capital of $62.2 million, which was 11.1% of aggregate debit balances and $49.6 million in excess of required net capital . . . ."

230. These statements contained untrue statements of material fact because the Company's reported regulatory capital was overstated and the Company failed to disclose that Refco had given Customer X a written guarantee, signed by Bennett, assuring Customer X that Refco Group would unconditionally repay RGHI's various loans from Customer X if RGHI were to default for any reason. Upon information and belief, the Company would not have satisfied its regulatory capital requirements during the Class Period if the true facts were disclosed regarding its hundreds of millions of dollars in uncollectible receivables. To the extent that the Company did maintain excess regulatory capital, the excess amounts were materially less than the figures reported in the IPO Registration Statement and were not sufficient "to absorb volatile market events," as represented in the IPO Registration Statement.

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

231. In describing the Company's historical ownership structure, the notes to the financial statements as contained in the IPO Prospectus stated that the Company was 90% owned by RGHI, and 10% owned by "BAWAG Overseas, Inc., a third party financial institution." This statement was materially incomplete and misleading, because the IPO Prospectus failed to disclose that BAWAG had also held a security interest in another 27% of the Company's equity,

by virtue of its secret loans to DF Capital and other Bennett-controlled entities. As a result, investors were led to believe that BAWAG's prior interest in Refco was limited to 10%, when in fact it held interests in approximately 37% of the Company's equity and therefore was in a position to exercise significant influence and control over the Company. In addition, the description of BAWAG Overseas as a "third-party financial institution" was materially misleading because it failed to disclose the true extent of the business dealings and interlocking relationships between BAWAG, Refco, Bennett, RGHI and other Defendants throughout the Class Period.

F. The Truth Begins to Emerge and the Company Collapses

232. The existence of the related-party loans between the Company, RGHI, and others, the massive uncollectible receivable that they concealed, and Refco Group's written guarantees to the third parties went undisclosed for years. The truth did not begin to emerge until a newly-hired Controller of the Company, who had begun working at Refco on August 3, 2005, discovered the true nature of these receivables after less than two months on the job.

233. Refco issued a press release on October 10, 2005 announcing that it had discovered an "undisclosed affiliate transaction." The press release stated, in relevant part, that Refco had:

> discovered through an internal review a receivable owed to the Company by an entity controlled by Phillip R. Bennett, Chief Executive Officer and Chairman of the Board of Directors, in the amount of approximately $430 million. Mr. Bennett today repaid the receivable in cash, including all accrued interest. Based on the results of the review to date, the Company believes that the receivable was the result of the assumption by an entity controlled by Mr. Bennett of certain historical obligations owed by unrelated third parties to the Company, which may have been uncollectible. The Company believes that all customer funds on deposit are unaffected by these activities.

234. Although it gave only sparse detail about the receivable, the October 10, 2005 press release conceded that the transaction had not been disclosed in the Company's previously-filed financial statements and, therefore,

> the Company determined, on October 9, 2005, that its financial statements, as of and for the periods ended, February 28, 2002, February 28, 2003, February 28, 2004, February 28, 2005, and May 31, 2005, taken as a whole, for each of Refco Inc., Refco Group Ltd., LLC and Refco Finance, Inc. ***should no longer be relied upon***.

(Emphasis added.)

235. In addition, the October 10, 2005 press release disclosed that the Company's Board of Directors had essentially fired Defendants Bennett and Maggio, stating that "at the request of the Board of Directors Mr. Bennett has taken a leave of absence .... Also at the request of the Board, Santo C. Maggio ... has taken a leave of absence."

236. The market's reaction to this startling announcement – just two months after Refco had sold over $670 million worth of stock to the investing public and just one month after Bennett rang the opening bell on the New York Stock Exchange – was swift. On October 10, 2005, the price of Refco's stock dropped from a closing price of $28.46 the previous trading day to close at $15.60 – a 45% drop in a single day – on unprecedented volume of over 24.2 million shares, which was over fifty times the average daily volume. Also on October 10, 2005, S&P lowered its rating on the Bonds from "B" to "B-" and placed the securities on CreditWatch with negative implications, while Moody's downgraded the Bonds' rating from "B3" to "Caa1."

237. However, the October 10, 2005 press release did not disclose the full extent of the problems facing Refco and the price of Refco securities remained artificially inflated despite the correction caused by this partial disclosure. For example, the press release downplayed the probable impact that the matters described in the press release would have on Refco's financial results and business operations. For instance, Refco stated that it "believes that all customer

funds on deposit are unaffected by these activities." In a further effort to assuage investor concerns, the press release quoted Defendant Sexton as stating, "I am staying at Refco because I believe in our employees, customers and franchise. I am excited about the opportunities ahead and am eager to work with our management team to help the Company achieve even greater success." Similarly, Defendant Murphy was quoted as stating, "We continue to see strong momentum across our businesses with record derivative contract and foreign exchange volume in the quarter."

238. In addition, the October 10, 2005 press release stated that "Mr. Bennett today repaid the receivable in cash, including all accrued interest." This statement did not disclose that Bennett had in fact obtained the funds to repay the debt from BAWAG, which had loaned him the money in the hours before the October 10, 2005 press release was issued, taking Bennett's shares of Refco as security. The press release also did not disclose that BAWAG, the source of this eleventh-hour loan, was also an entity whose trading losses the circular transactions were designed to conceal, and that BAWAG had repeatedly acted as a conduit for funds in the circular transactions. The October 10, 2005 press release thus omitted to state material facts necessary to make the statements included therein not misleading, and the market price of Refco securities remained artificially inflated as a consequence, such that the price of Refco's securities did not accurately reflect the value of the Company.

239. On October 11, 2005, the SEC announced commencement of a formal investigation of Refco. On that same day, Refco issued another press release stating that the "Company confirms that it has adequate liquidity to run the business in the ordinary course," even though, as the investing public would learn only two days later, the Company had actually begun to experience liquidity problems grave enough to threaten its ability to operate. The

October 11, 2005 press release also stated that the "receivable in the amount of $430 million was repaid yesterday in full," again failing to disclose the fact that Bennett had obtained the funds to repay the debt through an eleventh-hour loan from BAWAG. The October 11, 2005 press release thus omitted to state material facts necessary to make the statements included therein not misleading. The partial disclosure prompted a further partial correction of the trading prices of Refco securities, causing Refco stock to slide to close at $13.85 on a trading volume of 17.35 million shares and the Bonds – which were trading at 108.625% of par on October 7, 2005 and had never traded below 103% of par in the preceding twelve months – fell to 91.50%.

240. On October 12, 2005, the Company's securities prices dropped again following news that the United States Attorney for this District had arrested Bennett because he was considered a "flight risk." This news partially disclosed the serious nature of the financial improprieties at the Company – including the previously undisclosed news that Bennett had signed a letter of guaranty to Customer X on behalf of Refco Group for hundreds of millions of dollars – and caused the price of Refco's securities to decline again, with its stock closing at $10.85 on October 12, 2005, on volume of 35 million shares, and its Bonds dropping to approximately 76% of par on the same date.

241. The truth continued to leak into the market on October 13, 2005, when Refco announced – in a statement that was directly contrary to statements in the October 10 and 11, 2005 press releases – that:

> in light of recent events, the liquidity within the Company's non regulated subsidiary Refco Capital Markets, Ltd., which represents a material portion of the business of the Company is no longer sufficient to continue operations. The Company has therefore imposed a 15 day moratorium on all activities of Refco Capital Market, Ltd. to protect the value of the enterprise.

242. In response to this news, both Moody's and S&P lowered their ratings on the Bonds on October 13, 2005. S&P's rating was reduced from "B-" to "CCC," while Moody's downgraded the Bonds from "Caa1" to "Ca."

243. On October 13, 2005, with the price of Refco's shares having fallen to $7.90, the NYSE halted all trading in Refco shares. Trading in Refco stock did not resume for four days. The Bonds continued to trade throughout this period, with the price dropping as low as 16% of par by October 14, 2005, representing a loss of at least 80% of the Bonds' value in only four days. On October 14, 2005, S&P reduced its rating on the Bonds yet again, from "CCC" to "C."

244. On October 17, 2005, Refco publicly announced that it was filing for bankruptcy court protection in this District. With the trading restrictions lifted following Refco's bankruptcy filing, Refco's stock traded on a massive volume of 28.5 million shares on October 18, 2005, opening at 75 cents and closing at 65 cents per share. Thus, the price of Refco's publicly-traded stock had plummeted from $28.56 to 65 cents in little more than a week – a stunning decline of nearly 98% that resulted in a loss of market capitalization of more than $854 million.

245. On October 18, 2005, an article in *The Street.com* discussed Mayer Brown's role in the collapse of Refco, noting that "all of the loan documents used in the transactions were drafted by lawyers at the Chicago-based law firm" and that "Mayer Brown is one of the law firms that worked for Refco in the broker's $583 million IPO in August." The article also reported that "the real story" behind the disintegration of the Company was "how a cadre of well-paid accountants, Wall Street bankers and corporate lawyers failed to notice that CEO Phillip Bennett was allegedly cooking the books for the better part of a decade."

246. The dramatic fall in the prices of the Company's securities from October 10, 2005 to October 18, 2005, and the damages suffered by Plaintiffs and members of the Class, were a

direct result of the disclosure to investors and the market of the untrue statements and omissions of material facts described herein.

247. Refco and many of the Defendants named herein are currently under investigation by numerous criminal, civil and regulatory bodies, including the SEC, the NASD, and the CFTC.

VI. THE COMPANY'S VIOLATIONS OF GAAP

248. GAAP are those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. GAAP principles are the official standards accepted by the SEC and promulgated in part by the American Institute of Certified Public Accountants ("AICPA"). GAAP consists of a hierarchy of authoritative literature. The highest authority is comprised of Financial Accounting Standards Board ("FASB") Statements of Financial Accounting Standards ("SFAS"), followed by FASB Interpretations ("FIN"), Accounting Principles Board Opinions ("APB Opinion"), and AICPA Accounting Research Bulletins ("ARB"). GAAP provides other authoritative pronouncements including, among others, the FASB Concept Statements ("FASCON").

249. SEC Regulation S-X (17 C.F.R. § 210.4-01(a)(1)) provides that financial statements filed with the SEC which are not prepared in accordance with GAAP will be presumed to be false or misleading, despite footnote or other disclosures.

250. The financial statements issued by the Company for fiscal years 2002, 2003, 2004, and 2005, and the financial statements for the fiscal quarters therein, did not fairly and accurately represent the Company's financial position and the results of its operations because they violated key provisions of GAAP.

251. By failing to disclose recurring, significant related-party transactions between the Company and RGHI, the Company violated SFAS No. 57, Related Party Disclosures, which

states in relevant part:

> Financial statements shall include disclosures of material related party transactions, other than compensation arrangements, expense allowances, and other similar items in the ordinary course of business. However, disclosure of transactions that are eliminated in the preparation of consolidated or combined financial statements is not required in those statements. The disclosures shall include:
>
> a. The nature of the relationship(s) involved;
>
> b. A description of the transactions, including transactions to which no amounts or nominal amounts were ascribed, for each of the periods for which income statements are presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements;
>
> c. The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change in the method of establishing the terms from that used in the preceding period; [and]
>
> d. Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and manner of settlement.

252. SFAS No. 57 requires the disclosure of relationships between companies under common ownership or management control, when "the existence of that control could result in operating results or financial position of the reporting enterprise significantly different from those that would have been obtained if the enterprises were autonomous." Defendant Bennett, as the CEO, Chairman of the Board, and 43% owner of the Company prior to the IPO, exercised control over the Company. Bennett also controlled RGHI, as its sole stockholder. Because the Company and RGHI were clearly under common control, GAAP required full disclosure of all the transactions that took place between these entities.

253. The Company's related-party transactions with RGHI were not disclosed. At the end of each fiscal quarter, the Company engaged in off balance sheet transactions that removed receivables from RGHI (representing uncollectible customer receivables) from the Company's

books. To accomplish this feat, Defendants Bennett, Maggio and others contacted one or more customers of Refco, and suggested that the customers could borrow money from the Company and then loan that money to RGHI. RGHI used those funds to pay off its loan from the Company, thereby allowing the Company to remove a huge related-party receivable from its books. To ensure that the customer did not suffer any economic risk in the transaction, the Company guaranteed repayment of the customer's loan to RGHI.

254. When the reporting period for each fiscal period was over, the Company would re-loan the money to RGHI, which would pay off the loan from the customer, which would then repay its loan from the Company. These transactions allowed the Company to re-characterize bad debts as collectible receivables from unrelated parties, thereby materially misleading creditors and investors.

255. The Company did not fully disclose the nature and amounts of the round-tripping transactions involving RGHI and its customers, in violation of GAAP. The Company's obligation to disclose the related-party transactions was not alleviated when the outstanding balance was paid; it was still a related-party transaction that should have been disclosed to Refco's creditors and investors. Further, Refco's receivables from RGHI were outstanding on Refco's books for all but the first and last few days of each financial reporting period.

256. The Company also violated SFAS No. 5, Accounting for Contingencies, by failing to take a charge for the uncollectible customer receivables described herein. SFAS No. 5 establishes standards for reporting loss contingencies and requires that an estimated loss from a loss contingency be accrued as a charge to income if a liability has been incurred at the date of the financial statement and the amount of loss can be reasonably estimated. The receivables that were assumed by RGHI were known to be uncollectible since at least 2001, if not earlier, and a

charge should have been taken by 2001 at the latest.

257. Refco also failed to disclose that it guaranteed the multi-hundreds of millions of loans made by third parties to RGHI in the round-tripping transactions. This material omission violated FIN No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others. Even if the likelihood that Refco might have to make payment pursuant to the guarantee was remote, the Company was still required to disclose the details of such a material transaction, including the nature of the guarantee, the term of the guarantee, how the guarantee arose, and any circumstances that would require Refco to perform under the guarantee. The Company failed to disclose even the existence of the transaction that led to the guarantee, making its financial disclosures non-compliant with GAAP.

258. The Company also violated APB Opinion No. 22, Disclosure of Accounting Policies, which instructs companies to report changes in accounting policies. Accounting policies adopted by a company significantly affect the presentation of the company's financial position and results of operations. Accordingly, the usefulness of financial statements for purposes of making investment decisions depends significantly upon the investor's understanding of the accounting policies utilized by the company.

259. The Company devoted several pages of its SEC filings to "Significant Accounting Policies" and "Critical Accounting Policies," yet failed to disclose that it did not comply with those policies. Instead of following these policies, the Company repeatedly concealed uncollectible receivables through undisclosed related-party transactions. These recurring transactions, in effect, became Refco's accounting policy. However, the Company did not report this substantially varied accounting policy because it would have revealed the untruths in its financial statements.

260. Refco's financial statements also violated several general principles of GAAP, including:

- FASCON No. 1 ¶ 34: "Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions."

- FASCON No. 1 ¶ 40: "Financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events, and circumstances that change resources and claims to those resources."

- FASCON No. 1 ¶ 50: "Financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it . . . . To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general."

- FASCON No. 2 ¶ 58-59: "That information should be reliable as well as relevant is a notion that is central to accounting . . . . The reliability of a measure rests on the faithfulness with which it represents what it purports to represent . . . ."

- FASCON No. 2 ¶ 79, 80: Financial statements should be complete and contain all material information necessary for investors and creditors to make informed economic decisions.

- FASCON No. 2 ¶ 95, 97: Conservatism in financial reporting should be used as a prudent reaction to uncertainty to ensure that risk is adequately considered. "The best way to avoid the injury to investors that imprudent reporting creates is to try to ensure that what is reported represents what it purports to represent."

- FASCON No. 6 ¶ 145: "[R]ecognition of revenues, expenses, gains, and losses and the related increments or decrements in assets and liabilities–including matching of costs and revenues, allocation, and amortization–is the essence of using accrual accounting to measure performance of entities."

261. The Company's financial statements were not prepared in accordance with these general principles of GAAP because, among other reasons, the Company had not recognized losses that should have been recognized; its financial statements mischaracterized related-party

transactions and uncollectible receivables as legitimate customer receivables; and its financial statements did not disclose all material information necessary for creditors and investors to make informed investment decisions.

VII. GRANT THORNTON'S VIOLATIONS OF AUDITING STANDARDS

262. Public companies rely on independent registered public accounting firms to audit financial statements and review other public disclosures, assess internal controls, and gain the trust of the creditors and investors who will rely on the auditors' reports when deciding whether to invest in a company. The Public Company Accounting Oversight Board ("PCAOB"), which was established by the Sarbanes-Oxley Act of 2002, is responsible for the development of auditing standards that are required to be followed by all auditors for public companies. The PCAOB initially adopted as its Interim Professional Auditing Standards all the auditing standards that had previously been issued by the AICPA. The auditing standards issued or adopted by the PCAOB, together with the auditing standards issued by the AICPA, are herein encompassed by the term GAAS. The PCAOB and the AICPA have codified the professional auditing standards (represented herein as "AU") to ensure that audits are conducted in accordance with GAAS. See AU § 150.

263. There are ten GAAS provisions, which are divided into three types of standards: (1) general standards, which provide guidelines for auditor training and maintaining independence from the client; (2) standards of fieldwork, which provide guidelines for audit planning, collecting evidential verification for audit findings, and the proper evaluation of internal controls; and (3) standards of reporting, which are primarily concerned with ensuring that financial statements are presented in accordance with GAAP. As explained in detail below, Grant Thornton violated almost every one of these provisions during its tenure as the Company's purportedly independent auditor.

A. **Violations of General Standards**

264. GAAS General Standard No. 3 states: "Due professional care is to be exercised in the performance of the audit and the preparation of the report." The exercise of due care includes the application of professional skepticism in lieu of mere acceptance of representations made by management. Grant Thornton audited the Company's financial statements and provided audit reports thereon for the years ended February 28, 2003, February 29, 2004, and February 28, 2005. Grant Thornton failed to exercise due professional care and professional skepticism in the performance of its audits and in the preparation of its audit reports. Among other things, Grant Thornton repeatedly failed to detect huge, nine-figure sham transactions whereby the Company avoided disclosing related-party transactions and uncollectible receivables in its financial statements. After an extensive review, the Examiner concluded that Grant Thornton "failed to adequately test high-risk related party transactions, failed to approach [its] audits with the appropriate degree of skepticism, and failed to adequately consider and evaluate the potential for fraud within Refco, a company controlled by a few individuals who could override controls and who intended to sell the company."

265. GAAS General Standard No. 2 states that "[i]n all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors." Prior to 2002, Arthur Andersen served as the Company's independent auditor under the leadership of Mark Ramler ("Ramler"), Arthur Andersen's lead partner assigned to the Refco account. When Arthur Andersen began to collapse under the pressure of the Enron debacle, Ramler moved to Grant Thornton and took the Refco engagement with him. At Grant Thornton, Ramler remained the lead partner assigned to the Refco account. According to the Examiner's Report, Ramler's personnel file at Arthur Andersen states that his relationship with Refco was so

close that he believed its management did not engage in any transactions without soliciting his thoughts and advice, and that Bennett and other senior Refco executives called him almost daily to discuss transactions and business issues. Ramler's longstanding and close relationship with the Company and its management prevented him from maintaining the necessary independence in mental attitude.

B. Violations of Standards of Fieldwork

1. Standard of Fieldwork No. 1 – Audit Planning

266. GAAS Standard of Fieldwork No. 1 requires audits to be "adequately planned," and provides that particular attention should be paid to matters that, if inaccurately reported in a financial statement, could materially alter a company's financial situation.

267. GAAS requires that auditors pay significant attention to related-party transactions due to the inherent conflict of interest of such transactions. As noted above, SFAS No. 57, Related Party Disclosures, requires that all related-party transactions be disclosed in the company's financial reports, including the nature of the relationship, a description of the transaction, and the amount of the transaction. SFAS No. 57 warns that "[t]ransactions involving related parties cannot be presumed to be carried out on an arm's-length basis," and therefore require auditor substantiation.

268. Similarly, AU § 334, Related Parties, prescribes that independent auditors should be particularly aware of transactions that can be designed or manipulated to obscure related-party transactions, such as those used here to hide the Company's uncollectible receivables from RGHI. As noted in AU § 334.02, the auditor should recognize that the substance of a related party transaction could be significantly different from its form, and that the financial statements should reflect the substance of the transaction and not merely its form.

269. In planning its audits, an auditor must consider the audit risk posed by related-party transactions and then design and apply appropriate substantive tests to evaluate management's assertions. According to AU § 9334.19:

> The higher the auditor's assessment of risk regarding related party transactions, the more extensive or effective the audit tests should be. For example, the auditor's tests regarding valuation of a receivable from an entity under common control might be more extensive than for a trade receivable of the same size because the common parent may be motivated to obscure the substance of the transaction.

270. Pursuant to AU § 334.08, the following procedures should be followed to identify material transactions with related parties:

> f. Consider whether transactions are occurring, but are not being given accounting recognition, such as receiving or providing accounting, management or other services at no charge or a major stockholder absorbing corporate expenses.
>
> g. Review accounting records for large, unusual, or nonrecurring transactions or balances, paying particular attention to transactions recognized at or near the end of the reporting period.
>
> * * *
>
> i. Review invoices from law firms that have performed regular or special services for the company for indications of the existence of related party transactions.

271. Once related-party transactions are identified, GAAS provides that the auditor should apply those procedures to obtain satisfaction as to the purpose, nature, and extent of those transactions and their effect on the financial statements, and should not simply rely on management's assertions.

272. Grant Thornton was well aware that Refco engaged in at least some "significant related party transactions" and that Refco had affiliates that were not audited by Grant Thornton, as reflected in the "Evaluation of Proposed Client Form" that Ramler filled out when Grant Thornton took Refco on as an audit client in 2002. Nonetheless, Grant Thornton violated the

foregoing GAAS provisions by failing to implement procedures for identifying and ensuring full disclosure of the Company's related-party transactions, such as:

- Procedures for obtaining the names of all related parties, such as requesting the names from management personnel, reviewing the Company's filings with the SEC and other regulatory agencies, and identifying guarantors for large receivables;
- Procedures for identifying related party transactions, such as those set forth in AU § 334.08;
- Procedures for determining the trustworthiness of related-party transactions, such as assessing the extent and nature of the transactions, confirming the amounts and terms of the transactions, and evaluating the probability of repayment of uncollected balances; and/or
- Procedures for reviewing the Company's accounting process for the large and unusual transactions that were taking place at the end of each reporting period.

273. Grant Thornton's failure to implement appropriate procedures when auditing Refco's related-party transactions allowed the Company to implement a scheme to offload uncollectible receivables to RGHI, a related party, and to hide the existence of these related-party transactions from Plaintiffs and the investing public through round trip loan transactions with (among others) BAWAG, another related party.

274. GAAS also required Grant Thornton to identify "fraud risk factors," or circumstances that could lend themselves to fraudulent and/or illegal activities, as part of the audit planning process. AU § 316, Consideration of Fraud in a Financial Statement Audit, serves as a roadmap for uncovering accounting fraud by providing examples of "risk factors relating to misstatements arising from fraudulent financial reporting," and requires that independent auditors utilize professional skepticism. There were numerous red flags and "fraud risk factors" at the Company, including:

- "significant related-party transactions" and "significant, unusual, or highly complex transactions, especially those close to period end that pose difficult 'substance over form' questions," including large unsecured receivables from

RGHI that decreased significantly just before the end of each fiscal year and returned a few weeks later, and loans of hundreds of millions of dollars to BAWAG and other parties that were made and then unwound simultaneously with the decrease and return of the RGHI receivable;

- repeated journal entries made at every quarter-end and year-end over a period of several years to reflect loans being made to the customer and other entities to conceal the related-party loans to RGHI, and which were then reversed as the loans to the customer were "paid off" just after the end of the quarter;

- "pressure to perpetrate fraud," including significant pressure to avoid write-offs of bad debts which would have wiped out the Company's profits and members' equity and rendered the Company unable to satisfy its minimum regulatory capital requirements;

- "unusual or unexpected analytical relationships," specifically that the Company's financial statements indicated significant increases in receivable balances without corresponding decreases in uncollectible receivables reserves;

- "domination of management by a single person or small group," being that Bennett was the President, CEO, Chairman of the Board and 43% shareholder, while the THL Partner Defendants and their passive co-investors owned 57% of the Company and the THL Partner Defendants nominated half of the Company's board of directors;

- "significant financial interests in the entity" by management;

- management's desire and intention to sell their stakes in the Company to public investors through the Bond Offering and the IPO;

- "weaknesses in internal control," including an ineffective accounting and internal audit staff and the lack of formal procedures for closing the books;

- the Company's "history of violations of securities laws or other laws and regulations, or claims against the entity, its senior management, or board members alleging fraud or violations of laws and regulations," including that the Company had been under SEC investigation for stock short sales and aiding money managers in cheating municipalities, that the Company was fined approximately $7 million in a proceeding before the CFTC concerning inadequate record keeping, and that Maggio was under SEC investigation for stock manipulation;

- the resignation of Trosten as the Company's CFO shortly after the Bond Offering, and his receipt of a remarkably rich $45 million severance payment;

- the Company's high debt-to-equity ratio, with long-term debt being eight times greater than its reported members' equity; and

- "assets, liabilities, revenues, or expenses based on significant estimates that involve subjective judgments or uncertainties that are difficult to corroborate," in that the Company's allowance for bad debts was dependent on significant and sensitive assumptions, such as its customers' financial condition, the likelihood of payment on receivables, and the value of the underlying securities, of which the slightest change would materially alter the Company's financial results.

275. While Grant Thornton failed to recognize all of these red flags, it was aware of sufficient risks of fraud that, according to the Examiner's Report, it categorized Refco as a "high-risk client" in 2005 and an internal Grant Thornton email dated June 7, 2005 described the engagement as having "mucho issues/risks." Among the risk factors identified by Grant Thornton were the fact that it engaged in significant and complex related party transactions, its lack of an internal audit function, and its domination by a small number of executives who had personal interests in maximizing the Company's apparent financial health. Nonetheless, Grant Thornton failed to design or apply appropriate audit procedures to counteract those risks.

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

276. GAAS Standard of Fieldwork No. 2 and AU § 319 instruct auditors to obtain a sufficient understanding of a company and its internal control structure to plan an effective audit that will allow the auditor to assess the audit risk associated with inadequate internal controls. "Audit risk is the risk that the auditor may unknowingly fail to appropriately modify his or her opinion on financial statements that are materially misstated." AU § 312. 02, Audit Risk and Materiality in Conducting an Audit. "Internal control" is defined as a process "designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) reliability of financial reporting, (b) effectiveness and efficiency of operations, and (c) compliance with applicable laws and regulations." AU § 319.06, Consideration of Internal Control in a Financial Statement Audit – Definition of Internal Control. For financial

statement audits, internal controls serve as an integral way "to prevent or detect material misstatements in financial statement assertions."

277. Grant Thornton's audits of the Company's financial statements were devoid of an adequate assessment of the Company's internal controls. Specifically, although such problems existed at least as early as 2002, it was not until October 2004 – after the Bond Offering – that Grant Thornton identified and reported "significant deficiencies" in the Company's financial reporting internal controls, including the need to increase financial department resources to ensure the Company's reports were in compliance with SEC regulations and a lack of formalized procedures for closing the Company's books. Even then, however, Grant Thornton did not adjust its audit procedures to compensate for the risk created by these significant deficiencies.

278. [redacted]

279. Despite having identified the same significant deficiencies in Refco's internal controls for two straight years, Grant Thornton still did not adjust its audit procedures to account for the risks associated with those deficiencies.

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

280. GAAS Standard of Fieldwork No. 3 states that "[s]ufficent competent evidential matter is to be obtained through inspection, observation, inquiries and confirmations to afford a

reasonable basis for forming an opinion regarding the financial statements under audit." AU § 326, Evidential Matter, explains that the evidential matter collected and evaluated by auditors is central to a proper audit and serves as the foundation for the auditor's opinion report. Thus, Grant Thornton was required to investigate and obtain supporting evidential documentation for the assertions made by the Company in its financial statements, and could not merely take the word of the Company's management about the accuracy of their financial statements.

281. For related-party transactions, AU § 334.09 provides that an auditor should obtain competent evidential matter regarding the purpose, nature and extent of the transactions, and their impact on the financial statements.

282. As noted on Ramler's "Evaluation of Proposed Client" form in 2002, Grant Thornton was aware from the inception of its engagement that Refco has "significant related party transactions," that Refco had approximately $170 million in unsecured receivables from its parent, RGHI, that dated back to the 1980s; that RGHI was a "shell entity with no operations;" that Bennett had promised Arthur Andersen that the RGHI receivable "would no longer increase and would be paid down over a period of seven years" (including $50 million in fiscal 2003); and that if the receivable was not paid down it would have to be written off. According to the Examiner's Report, Grant Thornton "does not appear to have made any meaningful effort to determine that payments were actually made," and "appears to have simply accepted its client's false representation as to the true amount of [the RGHI] receivable."

283. After an intensive investigation and review of Grant Thornton's workpapers, the Examiner concluded that Grant Thornton did not review the loan documents, payments, or customer statements for RGHI's account, but instead "ignored its consistently high assessment of

the risks attendant to related party transactions and relied primarily on the representations of management personnel within Refco." As the Examiner explained:

> ... [T]he auditors took virtually no steps to perform procedures designed to obtain competent evidential matter concerning the nature, substance and amount of the high-risk, related-party transactions in order to satisfy themselves that related party transactions were adequately disclosed in the financial statements.
>
> Significantly, during the 2003 audit (the first year in which [Grant Thornton] had the engagement), [Grant Thornton] auditor Yonah Dahan e-mailed a list of document requests to Frank Mutterer at [Refco Capital LLC] indicating that [Grant Thornton] needed a list of payments made during the year by RGHI on the $71 million balance in its customer account at [Refco Capital LLC] and that [Grant Thornton] would need to trace some of those payments to Refco's bank statements. There is no evidence, however, that such procedure was ever actually performed. Indeed, if it had been, [Grant Thornton] likely would have discovered the fraud. [Grant Thornton] could have conducted a simple tracing of payments to bank statements for any of the years in question but did not. In addition, given the auditors' consistently high assessment of the audit risk arising from related-party transactions and the possibility that management could override controls, the auditors should have obtained and scrutinized the customer statements for RGHI's accounts at [Refco Capital] and [Refco Capital LLC], which would have revealed key aspects of the fraud, but did not do so.

284. The Examiner concluded that a review of RGHI's account statements at Refco Capital would also have alerted Grant Thornton that the RGHI accounts were being used to manipulate Refco's income and expenses.

285. Grant Thornton also failed to obtain competent evidential matter regarding the nature and purpose of Refco's related-party transactions with BAWAG. Grant Thornton noted a large debit balance in BAWAG's Refco Capital account at the end of fiscal 2003 and sent a confirmation notice to BAWAG, with an account statement attached that showed that the debit balance was primarily the result of a large, $175 million transfer made within a few days before the end of the fiscal year. This transfer was materially greater than the other inflows and outflows in the account, and it appeared on the account statement as a different type of transaction than the others in the account. Yet, according to the Examiner's Report, "there is no indication in the audit workpapers that [Grant Thornton] inquired as to where the cash had gone, or how the debit balance was secured, or why the transaction had occurred, despite the large amount of this extension of credit to a related party. [Grant Thornton] merely confirmed the account ending balance with BAWAG and moved on."

286. Grant Thornton was also aware of significant transactions with unrelated parties that occurred at the end of Refco's financial reporting periods – which appeared on Refco's books as either "repo" transactions or "time deposits" but were really round-trip loans – yet Grant Thornton made no effort to obtain evidential matter to verify the legitimacy of those transactions. Rather, as with BAWAG, it confined its analysis to a confirmation of certain account balances, without delving into the underlying transactions giving rise to those balances as required by relevant auditing standards.

287. AU § 342, Auditing Accounting Estimates, explains that an "auditor's objective when evaluating accounting estimates is to obtain sufficient competent evidential matter to provide reasonable assurance that . . . [a]ll accounting estimates that could be material to the financial statements have been developed." See AU § 342.07. Grant Thornton did not obtain

competent evidential matter to provide reasonable assurance of the reasonableness of the Company's estimate of its uncollectible receivables, which had a material effect on the Company's financial statements and was underestimated by more than $400 million.

288. Additionally, Grant Thornton did not obtain evidential support for the claims in the Company's public filings and statements concerning the Company's internal controls, risk management procedures, and accounting policies. Obtaining documentation to support these claims would have revealed that the Company had been re-characterizing uncollectible receivables as related-party receivables that were "collected" prior to each quarter-end, and that Refco had not implemented sufficient internal controls or accounting policies.

289. Had Grant Thornton adequately planned and conducted its audit in accordance with GAAS, it would have discovered these defects, as well as the massive misstatement of the Company's financial statements over many years that ultimately caused the Company's demise. As the Examiner concluded, Grant Thornton "failed to adequately test high-risk related party transactions, failed to approach [its] audits with the appropriate degree of skepticism, and failed to adequately consider and evaluate the potential for fraud within Refco, a company controlled by a few individuals who could override controls and who intended to sell the company."

C. Violations of Reporting Standards

290. GAAS Standard of Reporting No. 1 states: "The [audit] report shall state whether the financial statements are presented in accordance with [GAAP]." Grant Thornton issued unqualified audit reports stating that the Company's financial statements were presented fairly and in accordance with GAAP. In reality, however, the Company's financial statements violated GAAP, as the Company was improperly inflating its assets and earnings by exchanging

uncollectible customer receivables for receivables with a related party and laundering money by round-tripping funds with Bennett, BAWAG, and other intermediaries.

291. GAAS Standard of Reporting No. 3 provides that "[i]nformative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report." Grant Thornton violated this standard by failing to recognize and/or state in its report that the disclosures in the financial statements were not only inadequate, but materially incorrect.

292. GAAS Standard of Reporting No. 4 and AU § 508, Reports on Audited Financial Statements, provide that an auditor can only give an unqualified audit report if the company's "financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flows in conformity with [GAAP]," and the audit was conducted in accordance with GAAS. Section 508 further provides that if an auditor cannot give an unqualified audit report, the circumstances may require the auditor to give the company an adverse opinion or to include explanatory language in the audit opinion report to explain non-conformities.

293. In violation of the foregoing provisions, Grant Thornton issued unqualified audit opinions for each of the years ended February 28, 2003, February 29, 2004, and February 28, 2005, indicating that the Company's financial statements complied with GAAP, when in fact they did not. Rather than issuing unqualified audit reports, Grant Thornton should have issued either adverse audit reports noting the Company's non-compliance with GAAP, or issued qualified audit reports highlighting the fact that Refco's financial statements contained untrue statements of material fact and omitted facts necessary to make the statements contained therein not misleading. Grant Thornton did neither.

294. GAAS Standard of Reporting No. 3 states: "Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report." Thus, if the auditor does not qualify its audit report with details of non-compliance or inaccuracies in the financial statements' informative disclosures, investors and creditors will assume that those disclosures are accurate. As alleged herein, the disclosures in the Company's financial statements were not adequate, and were materially untrue, because, among other reasons, they failed to disclose the Company's uncollectible receivables, or the related-party transactions with RGHI and BAWAG that were being used to conceal those receivables.

295. Despite the Company's internal control problems, untrue statements of financial results, and non-disclosure of related-party transactions and uncollectible receivables, Grant Thornton continued to issue unqualified audit reports, which wrongly signified to creditors and investors that Grant Thornton had confirmed that the Company's financial statements were prepared in accordance with GAAP, that Grant Thornton had confirmed via evidential matter the claims made in the Company's financial statements, and that the Company's financial statements did not contain any materially untrue statements.

D. Violations of CFTC Rules and Regulations

296. In addition to issuing auditors' reports included in filings with the SEC, Grant Thornton issued reports that were included in filings with the CFTC. CFTC rules and regulations require that audits conducted pursuant to the CFTC regulations be conducted in accordance with GAAS. These rules and regulations also provide that the CFTC may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the CFTC to have engaged in unethical or improper professional conduct either in the course of an adjudicatory, investigative, rulemaking or other proceeding before the

CFTC or otherwise. Grant Thornton failed to comply with the CFTC regulations by failing to perform its audits in accordance with GAAS, as set forth above.

VIII. DEFENDANTS' NEGLIGENCE

A. The Offering Memorandum and the Bond Registration Statement

297. The Bond Underwriter Defendants did not conduct a reasonable investigation of the statements contained in the Offering Memorandum and the Bond Registration Statement, and did not possess reasonable grounds for believing that the statements in those documents were true and not misleading. In particular, the Bond Underwriter Defendants did not conduct a reasonable investigation into the accuracy of the textual descriptions in the Offering Memorandum and the Bond Registration Statement relating to, among other things, the Company's past performance, operations, business condition, and future prospects. Nor did the Bond Underwriter Defendants conduct a reasonable investigation into the accuracy of the financial information included in the Offering Memorandum and the Bond Registration Statement, including the financial information contained in the textual portions of those documents, as well as that contained in the attached audited and unaudited financial statements.

298. In addition, the Offering Memorandum and Bond Registration Statement contained risk factors relating to, among other things, the Company's substantial indebtedness; its exposure to customer credit risks; its compliance with regulatory requirements; its internal controls over financial reporting; and risks relating to employee misconduct. Having identified these factors as risks for potential investors, the Bond Underwriter Defendants were obligated to, but did not, conduct an especially diligent investigation into these issues in order to obtain reasonable assurance that the statements contained in the Offering Memorandum and Bond Registration Statement were true and not misleading.

299. Even after identifying potential discrepancies between the Offering Memorandum and the Company's true financial condition with respect to customer receivables, the Bond Underwriter Defendants did not ensure that the Offering Memorandum was corrected.

300.

301. Despite being aware of significant customer losses dating back more than five years, the Bond Underwriter Defendants did not investigate why the Company had not written those losses off. Had they done so, they likely would have discovered that the receivables were not only uncollectible, but were far in excess of the reserves that had been set up.

302. The Bond Underwriter Defendants' failure to conduct a reasonable investigation into the unaudited financial statements in the Bond Registration Statement was particularly negligent given the recent seminal opinion in this District, In re WorldCom, Inc. Sec. Litig., 346 F. Supp. 2d 628 (DLC) (S.D.N.Y. 2004), which reiterated and confirmed that underwriters

cannot simply rely on an auditors' work when investigating the accuracy of unaudited financial statements. Rather, because "the public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed" (id. at 685), underwriters must conduct their own, independent (and reasonable) investigation into the accuracy of unaudited financial statements.

303. Defendants Bennett, Trosten, Murphy, Lee, Sexton, Silverman, Maggio, Klejna, the THL Defendants, O'Kelley, Gantcher, and Breitman, each of whom prepared, approved, and/or signed the Offering Memorandum and/or the Bond Registration Statement, did not conduct a reasonable investigation of the statements contained in the Offering Memorandum and the Bond Registration Statement, and did not possess reasonable grounds for believing that the statements in those documents were true and not misleading.

304. Grant Thornton, which materially assisted in the preparation of Refco's fiscal 2003 and 2004 financial statements and consented to the inclusion in the Offering Memorandum and Bond Registration Statement of its audit opinions on those financial statements, performed its audits of the Company's financial statements in a negligent manner, which did not comply with GAAS and did not constitute a reasonable investigation of whether the Company's financial statements were accurate and in compliance with GAAP. As set forth above, Grant Thornton acted negligently in that its audit of Refco's financial statements violated, among others, the following basic principles of GAAS:

(a) General Standard No. 3, in that Grant Thornton failed to exercise due professional care in the performance of its audit and the preparation of its reports;

(b) Standard of Field Work No. 1, in that Grant Thornton failed to adequately plan and supervise its audit;

(c) Standard of Reporting No. 1, in that Grant Thornton's reports incorrectly stated that Refco's financial statements were presented in conformity with GAAP; and

(d) Standard of Reporting No. 4, in that Grant Thornton had an insufficient basis for expressing its unqualified opinions, for its audits had not been conducted in accordance with GAAS.

B. The IPO Registration Statement

305. The Stock Underwriter Defendants did not conduct a reasonable investigation of the statements contained in the IPO Registration Statement, and did not possess reasonable grounds for believing that the statements in the IPO Registration Statement were true and not misleading. In particular, the Stock Underwriter Defendants did not conduct a reasonable investigation into the accuracy of the textual descriptions in the IPO Registration Statement relating to, among other things, the Company's past performance, operations, business condition, and future prospects. Nor did the Stock Underwriter Defendants conduct a reasonable investigation into the accuracy of the financial information included in the IPO Registration Statement, including the financial information contained in the textual portions of the IPO Registration Statement, as well as that contained in the attached audited and unaudited financial statements.

306. The Stock Underwriter Defendants were aware prior to the IPO that Grant Thornton had identified significant deficiencies in Refco's internal controls, including a lack of resources and expertise in the accounting department. Grant Thornton's final management letter dated October 15, 2004 was circulated to representatives of Credit Suisse, BAS and Goldman Sachs on March 30, 2005.

Upon information and belief, the Stock Underwriter Defendants' counsel requested a response to Grant Thornton's management letter from Bennett and Sherer.

307.

308. The Stock Underwriter Defendants' failure to conduct a reasonable investigation into the unaudited financial statements in the IPO Registration Statement was particularly negligent given the recent seminal opinion in this District, In re WorldCom, Inc. Sec. Litig., 346 F. Supp. 2d 628 (DLC) (S.D.N.Y. 2004), which reiterated and confirmed that underwriters cannot simply rely on an auditors' work when investigating the accuracy of unaudited financial statements. Rather, because "the public relies on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed" (id. at 685), underwriters must conduct their own, independent (and reasonable) investigation into the accuracy of unaudited financial statements.

309. In addition, the IPO Registration Statement contained risk factors relating to, among other things, the Company's substantial indebtedness; its compliance with regulatory requirements; its internal controls over financial reporting; and risks relating to employee misconduct. Having identified these factors as risks for potential investors, the Stock

Underwriter Defendants were obligated to, but did not, conduct an especially diligent investigation into these issues in order to obtain reasonable assurance that the statements contained in the IPO Registration Statement were true and not misleading.

310. Defendants Bennett, Sherer, Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley, Harkins, and Schoen, each of whom prepared, approved, and/or signed the IPO Registration Statement, did not conduct a reasonable investigation of the statements contained in the IPO Registration Statement, and did not possess reasonable grounds for believing that the statements in the IPO Registration Statement were true and not misleading.

311. Grant Thornton, which consented to the inclusion in the IPO Registration Statement of its audit opinions for the Company's fiscal year 2003, fiscal year 2004, and fiscal year 2005 financial statements, performed its audits of the Company's financial statements in a negligent manner, which did not comply with GAAS and did not constitute a reasonable investigation of whether the Company's financial statements were accurate and in compliance with GAAP. Among other things, Grant Thornton violated the GAAS provisions set forth above by failing to properly plan and conduct its audits of the Company's financial statements.

IX. ALLEGATIONS PERTAINING TO CONTROL PERSON LIABILITY

312. Plaintiffs incorporate and reallege the allegations set forth above. In addition to the allegations set forth above, the following allegations demonstrate the control that certain Defendants exercised over Refco and related entities.

A. The Officer Defendants

313. The Officer Defendants had control of Refco by virtue of their executive positions with the Company, the key roles each played in the Company's management, and their direct involvement in its day-to-day operations, including its financial reporting and accounting functions. Facts demonstrating the Officer Defendants' control of Refco include:

(a) The Officer Defendants held the top management positions within the Company and thereby controlled the Company individually and collectively. Specifically:

(i) Bennett was Refco's President, CEO and Chairman from September 1998 through at least October 10, 2005.

(ii) Maggio was Executive Vice President of Refco, President and CEO of Refco Securities, LLC and President of Refco Capital from 1991 until at least October 10, 2005.

(iii) Sexton was Executive Vice President and COO of Refco from August 2004 through at least October 10, 2005, whereupon he assumed the position of CEO until at least the end of the Class Period.

(iv) Murphy was Executive Vice President of Refco and President and CEO of Refco Global Futures, LLC from March of 1999 until at least the end of the Class Period.

(v) Klejna was Executive Vice President and General Counsel of Refco from January 1999 through at least the end of the Class Period.

(vi) Sherer was the Executive Vice President and CFO of Refco from January 2005 until at least the close of the Class Period;

(vii) Silverman was Secretary of the Company from 1999 until at least October 10, 2005. Silverman also held numerous other high-level executive positions within Refco, including Controller of Refco Group during 2004 and the first half of 2005, and Director of Internal Audit at Refco Group at the time of the IPO. As Controller, Silverman was directly responsible for the closing of the

Company's books, implementation and maintenance of adequate internal financial controls, as well as the adoption and implementation of appropriate accounting policies for the Company.

(b) The Offering Memorandum, Bond Registration Statement, and the IPO Registration Statement touted the key role played by the Officer Defendants in the Company's operations and purported success. For example, the Bond Registration Statement discussed the potential departure of the Officer Defendants in a risk disclosure, emphasizing that:

> ***Our business operations could be significantly disrupted if we lost the members of our management team.***
>
> Our future success depends to a significant degree upon the continued contributions of our management team. Our future performance will be substantially dependent on our ability to retain and motivate them. [...] The loss of the services of any member of our management team...could adversely affect our ability to manage our business effectively or to execute our business strategy.

(Bold and italics in original, as heading). The Offering Memorandum and IPO Registration Statement each contained substantially similar discussions of the Officer Defendants' importance to the Company's affairs. In connection with the risk disclosure, the Bond Registration Statement further assured investors that Officer Defendants Bennett, Murphy, Sherer, Sexton, Maggio and Klejna were all subject to non-compete agreements with the Company in the event of their departure.

(c) The Executive Employment and Non-Competition Agreements pursuant to which Officer Defendants Bennett, Maggio, Sexton, Murphy, Klejna, and Sherer were employed gave each substantial authority over the day-to-day management and operation of the Company. Each of their agreements explicitly stated that they were employed "in a key capacity with the Company," and that they had access to "confidential information

regarding the organization, business and finances of the Company." Each of their employment agreements also placed non-competition, non-solicitation and no-hire restrictions on these defendants. Defendant Bennett's employment agreement, in particular, sets forth in detail his duties and responsibilities, which included:

> (i) formulating and executing the Company's business strategy; (ii) providing senior level counsel as to the business and operations of the Company; (iii) directing the day-to-day management of the Company's affairs; (iv) representing Company in relationships and business dealings within the financial services industry; and (v) participating in and supporting the activities of the Board.

(d) According to a former senior operating officer of a Europe-based Refco affiliate (the "Former Refco Officer"), who met frequently with Defendants Bennett, Sexton, Murphy, Maggio, and Trosten, those five officers were known to Refco staffers in the Company's offices abroad as the "New York Five" – a reflection of their control and domination of the Company's day-to-day operations from its headquarters in New York.

(e) Defendant Bennett also controlled Refco because he was one of the Company's largest shareholders. At the time of the Bond Offering, Bennett owned approximately 43% of the equity interests of Refco through RGHI. Following the IPO, Bennett owned 33.8% of Refco's outstanding common stock through RGHI and the Bennett Trust.

(f) Defendant Silverman also exercised control by virtue of his close relationship with Defendant Bennett. Silverman was a CPA and a close confidant of Bennett, to whom Bennett turned for advice and guidance on accounting matters. Upon information and belief, Silverman had significant influence over Bennett's decision-making on behalf of the Company with respect to accounting-related issues.

B. RGHI and the Bennett Trust

314. Facts demonstrating Defendant RGHI's and the Bennett Trust's control of Refco include:

(a) At all relevant times, RGHI and the Bennett Trust were instrumentalities of Defendant Bennett, wholly dominated and controlled by Bennett, and with no ability to take any action independent of Bennett. The Offering Memorandum, for example, disclosed that RGHI would be "wholly owned" by Bennett following the LBO. The IPO Registration Statement similarly disclosed that RGHI was "wholly-owned" by Bennett and that he was "both Trustee and Beneficiary" of the Bennett Trust. RGHI and the Bennett Trust had control of Refco by virtue of Defendant Bennett's pervasive control of the Company (discussed above), which was at all times exercised through RGHI and/or the Bennett Trust.

(b) Bennett used RGHI and the Bennett Trust as instrumentalities to hold and exercise his controlling equity interest in Refco. At the time of the Bond Offering, Defendant Bennett used RGHI as a vehicle to hold his approximately 43% equity interest in Refco. As a result of the IPO, and as set forth in the IPO Registration Statement, "[o]wnership by Phillip R. Bennett, which constitutes 33.8% of our outstanding common stock following the offering, represents direct ownership and indirect ownership through each of Refco Group Holdings, Inc. and the Phillip R. Bennett Three Year Annuity Trust." Following the IPO, RGHI held approximately 60% of Bennett's equity interests in Refco and the Bennett Trust held approximately 40% of Bennett's equity interests in Refco.

(c) As an instrumentality Bennett used to exercise control of Refco, RGHI

was party to numerous contracts pursuant to which the LBO and consequent securities offerings were achieved. Specifically, RGHI was party to the Equity Purchase and Merger Agreement dated June 8, 2004 (and as amended on July 9, 2004), which provided for the series of transactions forming the LBO, and the Securityholders Agreement, dated August 5, 2004, which governed the rights of Refco's equityholders in advance of the IPO. RGHI became contractually bound to these agreements by virtue of Defendant Bennett's signature.

(d) As an instrumentality Bennett used to exercise control of Refco, RGHI had the unrestricted right, pursuant to the Securityholders Agreement, to appoint two members of the Board of Directors, one of which was required to be Bennett, and the right to appoint a third jointly with the THL Partner Defendants.

(e) In addition, Refco has itself admitted that it was a "controlled company" within the meaning of NYSE rules by virtue of Bennett's and the THL Partner Defendants' collective post-IPO position in Refco stock, which consisted of Bennett's 33.8% (held through RGHI and the Bennett Trust) and the THL Partner Defendants' approximate 42.7% interest in Refco's outstanding shares. Refco benefited substantially from its status as a "controlled company" because the boards of directors of controlled companies are exempt from normal NYSE rules requiring that boards of directors, corporate governance committees, and compensation committees be independent.

C. <u>Robert C. Trosten</u>

315. Facts demonstrating Defendant Trosten's control of Refco include:

(a) Trosten was Executive Vice President and CFO of Refco from 2001 until his sudden resignation in October 2004. As CFO, Trosten was directly responsible for the preparation of Refco's financial statements, the closing of its books, its adoption and

compliance with appropriate accounting policies, and its maintenance of adequate internal financial controls.

(b) The Offering Memorandum and the Bond Registration Statement highlighted Trosten's importance to the Company's success as a central member of Refco's management team. The Bond Registration Statement stated that:

> ***Our business operations could be significantly disrupted if we lost members of our management team.***
>
> Our future success depends to a significant degree upon the continued contributions of our management team. Our future performance will be substantially dependant on our ability to retain and motivate them. [...] The loss of any member of our management team...could adversely affect our ability to manage our business effectively or execute our business strategy.

(bold and italics in original; as heading). The Offering Memorandum contained a substantially similar discussion of Trosten's importance to the Company.

(c) As noted above, according to the Former Refco Officer, Defendant Trosten was among the senior officers known to Refco staffers in the Company's offices abroad as one of the "New York Five" – a moniker reflecting his predominance of the Company's affairs from its headquarters in New York.

D. <u>The THL Partner Defendants</u>

316. The following facts further evidence the THL Partner Defendants' control of Refco:

(a) From the time of the LBO until the IPO, the THL Partner Defendants and their affiliates and passive co-investors held a controlling 57% interest in Refco shares. After the IPO, the THL Partner Defendants and their co-investors continued to hold a dominant 42.7% interest. Thomas H. Lee Partners was, at all times, the beneficial owner of all interests held by the THL Partner Defendants and their co-investors.

(b) The THL Partner Defendants dominated Refco's Board of Directors. Specifically, half of Refco's eight member Board of Directors (and prior to the IPO, fully half of New Refco's Board of Managers) was filled by the THL Partner Defendants' designees. These designees – the THL Individual Defendants – each held high-level positions within Thomas H. Lee Partners' upper management team, as set forth above. Indeed, the THL Partner Defendants had the unrestricted right, pursuant to a Securityholders Agreement, dated August 5, 2004, entered into in connection with the LBO, to appoint four of the eight members of the Company's Board, and the right to appoint a fifth jointly with RGHI.

(c) The Offering Memorandum acknowledged that the THL Partner Defendants would, upon consummation of the LBO, "have the ability to control all aspects of [the Company's] business."

(d) THL Managers V, LLC ("THL Managers"), of which Thomas H. Lee Partners is the Managing Member, was party to a Management Agreement, dated August 5, 2004, with Refco, pursuant to which it provided management and consulting services to Refco. As set forth in the Management Agreement, THL Managers was specifically retained because Refco required its "special skills and management advisory services in connection with [Refco's] business operations and execution of its strategic planning," and because THL Managers was "specifically skilled in corporate finance, strategic corporate planning, and other management skills and advisory services." The Management Agreement also states that THL Managers was retained to advise Refco "in connection with the negotiation and consummation of agreements, contracts, documents and instruments related to [Refco's] or any of its subsidiaries finances or relationships

with banks or other financial institutions," and "with respect to the development and implementation of strategies for improving the operating, marketing and financial performance of [Refco] and other senior management matters related to the business, administration and policies of [Refco] and its subsidiaries." Thus, at the same time that the THL Partner Defendants held a dominant position on Refco's Board of Directors and maintained a controlling interest in Refco stock, an entity controlled by Thomas H. Lee Partners was obligated by the Management Agreement to become deeply involved in the day-to-day management of Refco.

(e) In addition, Refco has characterized itself as a "controlled company" within the meaning of NYSE rules by virtue of the THL Partners Defendants' and RGHI's collective post-IPO position in Refco stock, which consisted of an approximate 42.7% interest of the THL Partner Defendants and their passive co-investors and RGHI's 33.8% interest in Refco's outstanding shares. Refco benefited substantially from its status as a "controlled company" because the boards of directors of controlled companies are exempt from normal NYSE rules requiring that boards of directors, corporate governance committees, and compensation committees be independent.

E. The THL Individual Defendants

317. Facts demonstrating Defendant Lee's control of Refco include:

(a) From the time of the LBO through at least the Class Period, Lee was a member of Refco's Board of Directors.

(b) Lee was the Chairman, CEO, and founder of Thomas H. Lee Partners, which itself controlled Refco.

(c) Lee provided services to Refco pursuant to the Management Agreement described in ¶ 316(d) above, and was therefore deeply involved in the day-to-day management of Refco.

(d) Lee was deemed to beneficially own the THL Partner Defendants' controlling interest in Refco shares.

318. Facts demonstrating Defendant Harkins' control of Refco include:

(a) From the time of the LBO through at least the Class Period, Harkins was a member of Refco's Board of Directors.

(b) Harkins was the Vice Chairman and Managing Director of Thomas H. Lee Partners, which itself controlled Refco.

(c) Harkins provided services to Refco pursuant to the Management Agreement described in ¶ 316(d), and was therefore deeply involved in the day-to-day management of Refco.

(d) Harkins was deemed to beneficially own the THL Partner Defendants' controlling interest in Refco shares.

319. Facts demonstrating Defendant Jaeckel's control of Refco include:

(a) From the time of the LBO through at least the Class Period, Jaeckel was a member of Refco's Board of Directors.

(b) Jaeckel was a Managing Director of Thomas H. Lee Partners, which itself controlled Refco.

(c) Jaeckel provided services to Refco pursuant to the Management Agreement described in ¶ 316(d) above, and was therefore deeply involved in the day-to-day management of Refco.

(d) Jaeckel was deemed to beneficially own the THL Partner Defendants' controlling interest in Refco shares.

320. Facts demonstrating Defendant Schoen's control of Refco include:

(a) From the time of the LBO through at least the Class Period, Schoen was a member of Refco's Board of Directors.

(b) Schoen was a Co-President of Thomas H. Lee Partners, which itself controlled Refco;

(c) Schoen provided services to Refco pursuant to the Management Agreement described in ¶ 316(d) above, and was therefore deeply involved in the day-to-day management of Refco;

(d) Schoen was deemed to beneficially own the THL Partner Defendants' controlling interest in Refco shares.

F. <u>The Audit Committee Defendants</u>

321. Facts demonstrating the Audit Committee Defendants' control of Refco include:

(a) Each of the Audit Committee Defendants was a member of the Audit Committee of New Refco's Board of Managers and subsequently of Refco's Board of Directors;

(b) As stated in the IPO Registration Statement, the Audit Committee Defendants were specifically responsible for overseeing:

(i) the integrity of Refco's financial statements;

(ii) Refco's compliance with legal and regulatory requirements;

(iii) Refco's independent auditors' qualifications and independence; and

(iv) the performance of Refco's independent auditors and Refco's internal audit function;

(c) As stated in the IPO Registration Statement, the Audit Committee Defendants were also specifically responsible for preparing the report required to be prepared by the Audit Committee pursuant to SEC rules;

(d) The Charter of the Audit Committee articulated the Audit Committee's responsibilities in even greater detail. In addition to the duties disclosed in the IPO Registration Statement, the responsibilities discussed in the Charter demonstrate the Audit Committee's pervasive involvement in the Company's auditing and financial reporting processes. These additional responsibilities include:

(i) Reviewing and discussing with management, internal audit and the independent auditor the adequacy and effectiveness of Refco's accounting and internal control policies and procedures on a regular basis, including the responsibilities, budget, compensation and staffing of the Company's internal audit function, through inquiry and discussions with the independent auditors, management and head of internal audit;

(ii) Discussing guidelines and policies governing the process by which senior management of Refco and the relevant departments of the Company, including the internal auditing department, assess and manage the Company's exposure to risk, as well as Refco's major financial and other risk exposures and the steps management has taken to monitor and control such exposures;

(iii) Reviewing and discussing with management the progress and results of internal audit projects, and, when deemed necessary or appropriate by

the Audit Committee, assigning additional internal audit projects to the head of internal audit;

(iv) Reviewing and discussing with management the Company's administrative, operational and accounting internal controls, including special audit steps adopted in light of the discovery of any significant and material control deficiencies;

(v) Meeting periodically with the general counsel, and outside counsel when appropriate, to review legal and regulatory matters, including (i) any matters that may have a material impact on the financial statements of the Company and (ii) any matters involving potential or ongoing material violations of law or breaches of fiduciary duty by the Company or any of its directors, officers, employees or agents or breaches of fiduciary duty to the Company; and

(vi) Reviewing and discussing with management, the Company's independent auditors and the head of internal audit, material financial arrangements of the Company which do not appear on the financial statements of the Company.

X. CLAIMS FOR RELIEF UNDER THE SECURITIES ACT

COUNT ONE

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

322. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict

liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

323. This Claim is brought pursuant to Section 12(a)(2) of the Securities Act against the Bond Underwriter Defendants and Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants, on behalf of PIMCO, the PIMCO High Yield Fund, and the other members of the Class who purchased or otherwise acquired 144A Bonds in the Bond Offering and were damaged by acts alleged in detail herein (collectively, the "Section 12(a)(2) Bond Plaintiffs").

324. The Offering Memorandum for the 144A Bonds contained all of the information required to be contained in a Section 10 prospectus, and constituted a prospectus for purposes of Section 12(a)(2) of the Securities Act. Further, the Bond Offering was a public offering of exempt-from-registration securities.

325. The Bond Underwriter Defendants were underwriters of the public offering of the Bonds. Although the Bonds were exempt-from-registration pursuant to Rule 144A, the Bond Underwriter Defendants performed functions identical to those they would have performed if the Bonds were registered.

326. The Bond Underwriter Defendants sold the 144A Bonds to the Section 12(a)(2) Bond Plaintiffs in the Bond Offering.

327. Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants, as well as Refco Group, Refco Finance Holdings and the Bond Underwriter Defendants, solicited the Section 12(a)(2) Bond Plaintiffs' purchases of the 144A Bonds in the Bond Offering. Their actions of solicitation included preparation and distribution of the Offering Memorandum, inviting the Section 12(a)(2) Bond Plaintiffs to attend the Bond Road Show, and setting up and

attending the Bond Road Show, where they aggressively marketed the Bonds to the Section 12(a)(2) Bond Plaintiffs through written and oral presentations.

328. In soliciting the Section 12(a)(2) Bond Plaintiffs' purchases of the 144A Bonds in the Bond Offering, Refco Group, Refco Finance Holdings, the Bond Underwriter Defendants, and Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants were motivated by their own or the security owner's financial interests.

329. The Bond Underwriter Defendants, Refco Group, Refco Finance Holdings, and Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants sold and/or offered to sell the 144A Bonds to the Section 12(a)(2) Bond Plaintiffs by means of the Offering Memorandum and oral communications at the Bond Road Show, all of which contained untrue statements of material fact, including, but not limited to, the financial statements of Refco Group and its subsidiaries, and discussions thereof. In addition, as alleged in detail herein, the Offering Memorandum and oral communications at the Bond Road Show omitted to state material facts necessary to make the statements, in the light of the circumstances in which they were made, not misleading, including the significant related-party transactions between the Company, BAWAG and RGHI, and the uncollectibility of hundreds of millions of dollars of the Company's receivables due to high levels of customer credit losses in prior years. The facts misstated and omitted would have been material to a reasonable person reviewing the Offering Memorandum or hearing the oral representations.

330. The Bond Underwriter Defendants, Refco Group, Refco Finance Holdings, and Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants each owed the Section 12(a)(2) Bond Plaintiffs the duty to make a reasonable and diligent investigation of the statements contained in the Offering Memorandum and of the oral and written statements made

at the Bond Road Show, to ensure that they did not include untrue statements of material facts or omit to state material facts necessary to make the statements, in the light of the circumstances in which they were made, not misleading.

331. As alleged in detail herein, the Bond Underwriter Defendants, Refco Group, Refco Finance Holdings, and Defendants Bennett, Trosten, Jaeckel, and the THL Partner Defendants did not make a reasonable and diligent investigation and did not possess reasonable grounds for believing that the statements in the Offering Memorandum and the oral and written statements presented at the Bond Road Show did not include untrue statements of material facts or omit to state material facts necessary to make the statements, in the light of the circumstances in which they were made, not misleading.

332. At the time the Section 12(a)(2) Bond Plaintiffs purchased Bonds in the Bond Offering, they did not know, nor in the exercise of reasonable diligence could they have known, of any of the untruths or omissions alleged in detail herein.

333. The Section 12(a)(2) Bond Plaintiffs suffered injury as a result of Defendants' actions in violation of Section 12(a)(2) of the Securities Act.

334. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the Bond Offering.

335. The Section 12(a)(2) Bond Plaintiffs hereby tender their Bonds to Defendants and seek rescission of their purchases to the extent that they continue to own such securities.

COUNT TWO

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

336. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

337. This Claim is brought pursuant to Section 15 of the Securities Act against the THL Partner Defendants and Defendants Lee, Bennett, Grant, RGHI, Murphy, Trosten, Sexton, Silverman, and Maggio, on behalf of PIMCO, the PIMCO High Yield Fund, and the other Section 12(a)(2) Bond Plaintiffs.

338. As alleged in detail herein, Refco Group, Refco Finance Holdings, and Refco Finance violated Section 12(a)(2) of the Securities Act by soliciting the Section 12(a)(2) Bond Plaintiffs' purchases of the 144A Bonds in the Bond Offering by means of a prospectus (the Offering Memorandum) and oral statements that included untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. In soliciting these purchases, Refco Group, Refco Finance Holdings, and Refco Finance were motivated by their own financial interests. Refco Group, Refco Finance Holdings, and Refco Finance failed to exercise reasonable care regarding the accuracy and completeness of the Offering Memorandum and oral statements. The facts misstated and omitted would have been material to a reasonable person.

But for the fact that Refco Group, Refco Finance Holdings, and Refco Finance have filed for bankruptcy protection, they would be named as defendants on the Section 12(a)(2) claims alleged herein.

339. As a direct and proximate result of the violations of Section 12(a)(2) of the Securities Act by Refco Group, Refco Finance Holdings, and Refco Finance, the Section 12(a)(2) Bond Plaintiffs suffered damages in connection with their purchases of 144A Bonds in the Bond Offering and were damaged by the acts alleged in detail herein.

340. Defendants Bennett, Murphy, Trosten, Sexton, Silverman and Maggio were controlling persons of Refco Group, Refco Finance Holdings, and Refco Finance due (among other reasons alleged in detail herein) to their executive positions with Refco Group and Refco Finance Holdings (of which Refco Finance was a wholly-owned subsidiary at the time of the Bond Offering); their direct involvement in the day-to-day business and operations of each entity, including the preparation of their financial statements; their participation in the Bond Road Show where the Bonds were marketed to investors and the contents of the Offering Memorandum were discussed; and/or their participation in the preparation and dissemination of the inaccurate Offering Memorandum for the Bonds. By virtue of the foregoing, each of these Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco Group, Refco Finance Holdings, and Refco Finance, including the content and dissemination of their financial statements and the Offering Memorandum.

341. Defendant Bennett was also a controlling person of Refco Group at the time of the Bond Offering due (among other reasons alleged in detail herein) to his substantial ownership

interest (through his ownership interest in RGHI) in New Refco, the sole member of Refco Group.

342. Defendant RGHI was a controlling person of Refco Group at the time of the Bond Offering due (among other reasons alleged in detail herein) to its approximate 43% ownership interest in New Refco, the sole member of Refco Group.

343. The THL Partner Defendants were controlling persons of Refco Group at the time of the Bond Offering due (among other reasons alleged in detail herein) to their approximate 57% ownership interest in New Refco, the sole member of Refco Group.

344. Defendant Lee was a controlling person of Refco Group at the time of the Bond Offering due (among other reasons alleged in detail herein) to his position as Chairman and CEO of Thomas H. Lee Partners, and the fact that Thomas H. Lee Partners or Lee controlled each of the other THL Partner Defendants, which in turn controlled Refco Group.

345. The THL Partner Defendants and Defendants Lee, Bennett, RGHI, Murphy, Trosten, Sexton, Silverman, and Maggio acted negligently and without reasonable care regarding the accuracy of the information contained in the prospectus for the Bonds, and lacked reasonable grounds to believe that such information was accurate and complete in all material respects.

346. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the Bond Offering.

347. Pursuant to Section 15 of the Securities Act, the THL Partner Defendants and Defendants Lee, Bennett, RGHI, Murphy, Trosten, Sexton, Silverman, and Maggio are jointly and severally liable with, and to the same extent as, Refco Group, Refco Finance Holdings, and Refco Finance, for those entities' violations of Section 12(a)(2) of the Securities Act.

COUNT THREE

For Violations of Section 11 of the Securities Act, On Behalf of Purchasers of Registered Bonds, Against the Section 11 Bond Defendants

348. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

349. This Claim is brought pursuant to Section 11 of the Securities Act against Defendants Bennett, Murphy, Lee, Sexton, Silverman, Maggio, Klejna, Harkins, Jaeckel, Schoen, O'Kelley, Gantcher, Breitman, Grant Thornton, and the Bond Underwriter Defendants (collectively, the "Section 11 Bond Defendants"), on behalf of PIMCO, the PIMCO High Yield Fund, and all other members of the Class who purchased or otherwise acquired Registered Bonds during the Class Period and were damaged by acts alleged herein (collectively, the "Section 11 Bond Plaintiffs").

350. The Registered Bonds were issued pursuant to the Bond Registration Statement. All purchases of Registered Bonds are traceable to the Bond Registration Statement.

351. The Bond Registration Statement contained untrue statements of material facts, including, but not limited to, the financial statements of Refco Group and its subsidiaries and other statements regarding Refco Group's business operations and financial results. In addition, the Bond Registration Statement omitted to state material facts required to be stated therein or necessary to make the statements made not misleading, including the significant related-party transactions between the Company and RGHI and the uncollectibility of hundreds of millions of

dollars of the Company's receivables. The facts misstated and omitted would have been material to a reasonable person reviewing the Bond Registration Statement.

352. Refco Group and Refco Finance were the co-issuers of the Bonds pursuant to the Bond Registration Statement, and would be strictly liable for the untrue statements of material fact and omissions to state material facts therein, but for their filing for bankruptcy court protection.

353. Defendants Bennett, Murphy, Lee, Sexton, Silverman, Maggio, and Klejna each signed the Bond Registration Statement.

354. At the time the Bond Registration Statement was filed, Defendants Bennett, Lee, Harkins, Jaeckel, Schoen, O'Kelley, Gantcher, and Breitman were managers of New Refco, which managed and was the sole member of Refco Group. As such, these Defendants performed similar functions to those of directors of Refco Group, a co-issuer of the Bonds.

355. Defendant Grant Thornton was the auditor for Refco Group and its subsidiaries, and consented to being named in the Bond Registration Statement as a party who certified the audited financial statements contained therein. Grant Thornton's audit report, which was contained in the Bond Registration Statement, incorrectly stated that Grant Thornton's audits were performed in accordance with GAAS and that the Company's financial statements were fairly presented in accordance with GAAP.

356. The Bond Underwriter Defendants were underwriters for the Bonds. They served as underwriters in connection with the Bond Offering with the understanding and expectation that the Rule 144A Bonds would later be exchanged for Registered Bonds, and that the Registered Bonds would be registered pursuant to a registration statement that was substantially similar to the Offering Memorandum prepared by the Bond Underwriter Defendants for the

Bond Offering. The Bond Registration Statement, which was prepared with significant participation from the Bond Underwriter Defendants – including participation in drafting sessions by the Bond Underwriter Defendants both individually and through their counsel – included untrue statements of material fact and material omissions, as alleged in detail herein.

357. The Section 11 Bond Defendants owed the Section 11 Bond Plaintiffs the duty to make a reasonable and diligent investigation of the statements contained in the Bond Registration Statement, to ensure that they did not contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

358. As alleged in detail herein, the Section 11 Bond Defendants did not make a reasonable investigation of the statements contained in the Bond Registration Statement, and did not possess reasonable grounds for believing that the Bond Registration Statement did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

359. The Section 11 Bond Plaintiffs did not know, nor in the exercise of reasonable diligence could they have known, of the untrue statements of material facts or omissions of material facts in the Bond Registration Statement when they purchased or acquired those Bonds.

360. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the Exchange Offer pursuant to the Bond Registration Statement..

361. By reason of the foregoing, the Section 11 Bond Defendants are liable to the Section 11 Bond Plaintiffs for violations of Section 11 of the Securities Act.

COUNT FOUR

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

362. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

363. This Claim is brought pursuant to Section 15 of the Securities Act against the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman, on behalf of the Section 11 Bond Plaintiffs.

364. As alleged herein, Refco Group violated Section 11 of the Securities Act by signing and issuing the Bond Registration Statement, which included untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading. The facts misstated and omitted would have been material to a reasonable person. But for the fact that Refco Group has filed for bankruptcy protection, it would be named as a defendant on the Section 11 claims alleged in detail herein.

365. As a direct and proximate result of Refco Group's violation of Section 11 of the Securities Act, the Section 11 Bond Plaintiffs suffered damages in connection with their purchase and/or acquisition of Registered Bonds during the Class Period and were damaged by the acts alleged in detail herein.

366. The THL Partner Defendants were controlling persons of Refco Group when the Bond Registration Statement was filed and became effective, due (among other reasons alleged herein) to the approximate 57% ownership interest that those Defendants, together with their passive co-investors, had in New Refco, the sole member of Refco Group.

367. The THL Individual Defendants were controlling persons of Refco Group when the Bond Registration Statement was filed and became effective, due (among other reasons alleged herein) to their positions as four of the Company's eight managers, and their executive positions with the THL Partner Defendants, which controlled Refco Group.

368. Defendant Bennett was a controlling person of Refco Group when the Bond Registration Statement was filed and became effective, due (among other reasons alleged herein) to his approximate 43% ownership interest (through his sole ownership of RGHI and control of the Bennett Trust) in New Refco, the sole member of Refco Group.

369. Defendants RGHI and the Bennett Trust were controlling persons of Refco Group when the Bond Registration statement was filed and became effective due (among other reasons alleged in detail herein) to the approximate 43% ownership interest that these Defendants had in New Refco, the sole member of Refco Group.

370. Defendants Bennett, Murphy, Sherer, Sexton, Silverman, Maggio, and Klejna were controlling persons of Refco Group due (among other reasons alleged herein) to their executive positions therewith; their direct involvement in its day-to-day operations, including its financial reporting and accounting functions; and their signatures on and participation in the preparation and/or dissemination of the Bond Registration Statement.

371. Defendants O'Kelley, Gantcher and Breitman were controlling persons of Refco Group due (among other reasons alleged herein) to their service on the Audit Committee of New

Refco, which also performed the functions of an audit committee for Refco Group. As members of the Audit Committee, these Defendants were responsible for overseeing Refco Group's financial reporting, accounting, and internal controls; overseeing the activities of Refco Group's outside auditors and reviewing the scope and results of those audits with the auditors; and meeting with and making recommendations to the managers of Refco Group concerning the foregoing activities.

372. By virtue of the foregoing, the THL Defendants, Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, Breitman and BAWAG each had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco Group, including the content of its financial statements and of the Bond Registration Statement.

373. The THL Defendants, Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman acted negligently and without reasonable care regarding the accuracy of the information contained in the Bond Registration Statement, and lacked reasonable grounds to believe that such information was accurate and complete in all material respects.

374. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the Exchange Offer pursuant to the Bond Registration Statement.

375. Pursuant to Section 15 of the Securities Act, the THL Defendants, Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman are jointly and severally liable with, and to the same extent as, Refco Group for its violation of Section 11 of the Securities Act.

COUNT FIVE

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

376. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

377. This Claim is brought pursuant to Section 11 of the Securities Act against Defendants Bennett, Sherer, Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley, Schoen, Grant Thornton, and the Stock Underwriter Defendants (collectively, the "Section 11 Stock Defendants"), on behalf of RH Capital and other members of the Class who, during the Class Period, purchased or otherwise acquired Refco common stock issued pursuant and/or traceable to the IPO Registration Statement and were damaged by acts alleged herein (collectively, the "Section 11 Stock Plaintiffs").

378. Refco issued common stock pursuant to the IPO Registration Statement. All purchases of Refco common stock are traceable to the IPO Registration Statement.

379. The IPO Registration Statement contained untrue statements of material fact, including, but not limited to, the financial statements of Refco and its subsidiaries and other statements regarding Refco's business operation and financial results. In addition, the IPO Registration Statement omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading, including the significant related-party transactions between the Company and RGHI and the uncollectibility of hundreds of millions of dollars of the Company's receivables. The facts misstated and omitted would have been material to a

reasonable person reviewing the IPO Registration Statement.

380. Refco issued stock pursuant to the IPO Registration Statement, and would be strictly liable for the untrue statements of material fact and omissions to state material facts therein, but for its filing for bankruptcy court protection.

381. Defendants Bennett, Sherer, Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley, and Schoen each signed the IPO Registration Statement.

382. At the time the IPO Registration Statement was filed, Defendants Bennett, Sherer, Breitman, Gantcher, Harkins, Jaeckel, Lee, O'Kelley, and Schoen were directors of Refco.

383. Defendant Grant Thornton was the auditor for Refco and its subsidiaries, and consented to being named in the IPO Registration Statement as a party who certified the audited financial statements contained therein. Grant Thornton's audit report, which was contained in the IPO Registration Statement, incorrectly stated that Grant Thornton's audits were performed in accordance with GAAS and that the Company's financial statements were fairly presented in accordance with GAAP.

384. The Stock Underwriter Defendants sold shares of Refco stock in the IPO, participated in the preparation of the IPO Registration Statement and were responsible for the contents and dissemination of the IPO Registration Statement.

385. The Section 11 Stock Defendants owed to the Section 11 Stock Plaintiffs the duty to make a reasonable and diligent investigation of the statements contained in the IPO Registration Statement, to ensure that the statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading.

386. As alleged in detail herein, the Section 11 Stock Defendants did not make a

reasonable investigation of the statements contained in the IPO Registration Statement, and did not possess reasonable grounds for believing that the IPO Registration Statement did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

387. The Section 11 Stock Plaintiffs did not know, nor in the exercise of reasonable diligence could they have known, of the untrue statements of material fact or omissions of material facts in the IPO Registration Statement when they purchased or acquired the stock.

388. By reason of the foregoing, the Section 11 Stock Defendants are liable to the Section 11 Stock Plaintiffs for violations of Section 11 of the Securities Act.

COUNT SIX

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

389. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

390. This Claim is brought pursuant to Section 15 of the Securities Act against the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Maggio, Klejna, Breitman, Gantcher, and O'Kelley (collectively, the "Section 15 Stock Defendants"), on behalf of RH Capital, and the other members of the Class who purchased who purchased or acquired the stock issued in or traceable to the IPO, and were damaged by acts alleged herein (the "Section 15 Stock Plaintiffs").

391. As alleged in detail herein, Refco violated Section 11 of the Securities Act with respect to the IPO by an issuing the IPO Registration Statement, which included untrue statements of material fact and omitted to state material facts required to be stated therein or necessary in order to make the statements therein not misleading. The facts misstated and omitted would have been material to a reasonable person reviewing the IPO Registration Statement. But for the fact that Refco has filed for bankruptcy protection, it would be named as a Defendant on the Section 11 claims alleged in detail herein.

392. The Section 15 Stock Defendants had a duty to disseminate accurate and truthful information with respect to Refco's financial condition and results of operations.

393. The THL Partner Defendants were controlling persons of Refco when the IPO Registration Statement was filed and became effective, due (among other reasons alleged herein) to the approximate 42.7% ownership interest that these Defendants, together with their passive co-investors, had in Refco.

394. The THL Individual Defendants were controlling persons of Refco when the IPO Registration Statement was filed and became effective, due (among other reasons alleged herein) to their positions as four of the Company's eight managers, and their executive positions with the THL Partner Defendants, which controlled Refco.

395. Defendant Bennett was a controlling person of Refco when the IPO Registration Statement was filed and became effective, due (among other reasons alleged herein) to his approximate 33.8% ownership interest (through his sole ownership of RGHI and control of the Bennett Trust) in Refco.

396. Defendants RGHI and the Bennett Trust were controlling persons of Refco when the IPO Registration statement was filed and became effective due (among other reasons alleged in detail herein) to the approximate 33.8% ownership interest that these Defendants had in Refco.

397. Defendants Bennett, Murphy, Sherer, Sexton, Maggio and Klejna, were controlling persons of Refco due (among other reasons alleged herein) to their executive positions therewith; their direct involvement in its day-to-day operations, including its financial reporting and accounting functions; and their signatures on and participation in the preparation and/or dissemination of the IPO Registration Statement.

398. Defendants O'Kelley, Gantcher and Breitman were controlling persons of Refco due (among other reasons alleged herein) to their service on the Audit Committee of Refco. As members of the Audit Committee, these Defendants were responsible for overseeing Refco's financial reporting, accounting, and internal controls; overseeing the activities of Refco's outside auditors and reviewing the scope and results of those audits with the auditors; and meeting with and making recommendations to the managers of Refco concerning the foregoing activities.

399. By virtue of the foregoing, the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Maggio, Klejna, O'Kelley, Gantcher, and Breitman each had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco, including the content of its financial statements and of the IPO Registration Statement.

400. Lead Plaintiff RH Capital and the Section 15 Stock Plaintiffs purchased Refco securities issued in, or traceable to, the IPO and were damaged thereby. The IPO was conducted pursuant to the IPO Registration Statement.

401. The Section 15 Stock Defendants acted negligently and without reasonable care regarding the accuracy of the information contained in the IPO Registration Statement and lacked reasonable grounds to believe that such information was accurate and complete in all material respects.

402. The Section 15 Stock Plaintiffs did not know, and in the exercise of reasonable diligence could not have known, of the inaccurate statements and omissions in the IPO Registration Statement.

403. The Section 15 Stock Plaintiffs have sustained damages as a result of the inaccurate statements and omissions in the IPO Registration Statement, for which they are entitled to compensation.

404. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the IPO pursuant to the IPO Registration Statement.

405. Pursuant to Section 15 of the Securities Act, the Section 15 Stock Defendants are jointly and severally liable with and to the same extent as Refco, for its violations of Section 11 of the Securities Act.

COUNT SEVEN

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

406. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

407. This claim is brought pursuant to Section 12(a)(2) of the Securities Act against the Stock Underwriter Defendants on behalf of RH Capital and other members of the Class who purchased or otherwise acquired Refco common stock in the IPO and were damaged by the acts alleged in detail herein.

408. The Stock Underwriter Defendants sold shares of Refco stock in the IPO and were responsible for the contents and dissemination of the Prospectus. As alleged in detail herein, the Prospectus contained untrue statements of material fact and omitted to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. The untrue statements of material fact in the Prospectus included, but were not limited to, the financial statements of Refco and other statements regarding Refco's business operation and financial results. In addition, the Prospectus omitted to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, including the significant related-party transactions between the Company and RGHI, and the uncollectibility of hundreds of millions of dollars of the Company's receivables due to high levels of customer credit losses in prior years. The facts misstated and omitted would have been material to a reasonable person reviewing the Prospectus.

409. The Stock Underwriter Defendants owed to the purchasers of Refco stock, including Plaintiff RH Capital, the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that it was true and that there was no omission to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

410. As alleged in detail herein, the Stock Underwriter Defendants did not make a

reasonable and diligent investigation and did not possess reasonable grounds for believing that the Prospectus did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

411. Plaintiff RH Capital and the members of the Class did not know, nor in the exercise of reasonable diligence could they have known, of the untruths and omissions contained in the Prospectus at the time they acquired Refco stock.

412. By reason of the foregoing, the Stock Underwriter Defendants are liable to Plaintiff RH Capital and other members of the Class who purchased or otherwise acquired stock issued in the IPO pursuant to the Prospectus for violations of Section 12(a)(2) of the Securities Act, each of whom has been damaged by reason of such violations.

413. Plaintiff RH Capital and other members of the Class who purchased or otherwise acquired stock issued in the IPO pursuant to the Prospectus hereby tender their shares of Refco stock to Defendants and seek rescission of their purchases to the extent that they continue to own such securities.

COUNT EIGHT

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

414. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein, except allegations that the Defendants made the untrue statements of material facts and omissions intentionally or recklessly. For the purposes of this Claim, Plaintiffs assert only strict liability and negligence claims and expressly disclaim any claim of fraud or intentional misconduct.

415. This Claim is brought pursuant to Section 15 of the Securities Act against the Section 15 Stock Defendants on behalf of the Section 15 Stock Plaintiffs.

416. As alleged in detail herein, Refco violated Section 12(a)(2) of the Securities Act by soliciting the Section 15 Stock Plaintiffs' purchases of Refco's common stock by means of the IPO Prospectus, which included untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading. In soliciting these purchases, Refco was motivated by its own financial interests. Refco failed to exercise reasonable care regarding the accuracy and completeness of the IPO Prospectus. The facts misstated and omitted would have been material to a reasonable person. The facts misstated and omitted would have been material to a reasonable person reviewing the IPO Prospectus. But for the fact that Refco has filed for bankruptcy protection, it would be named as defendants on the Section 12(a)(2) claims alleged herein.

417. The Section 15 Stock Defendants had a duty to disseminate accurate and truthful information with respect to Refco's financial condition and results of operations.

418. As alleged above, the Section 15 Stock Defendants at all relevant times either (i) participated in the operation and management of the Company, and/or (ii) conducted and participated, directly and indirectly, in the conduct of Refco's business affairs, and/or (iii) exerted controlling influence over the Company through the nature of their relationships with Bennett and others. Because of their positions of control and authority over Refco, the Section 15 Stock Defendants were able to, and did, control the contents of the IPO Prospectus.

419. Lead Plaintiff RH Capital and the Section 15 Stock Plaintiffs purchased Refco securities issued in, or traceable to, the IPO and were damaged thereby. The IPO was conducted pursuant to the IPO Prospectus.

420. The Section 15 Stock Defendants acted negligently and without reasonable care regarding the accuracy of the information contained in the IPO Prospectus and lacked reasonable grounds to believe that such information was accurate and complete in all material respects.

421. The Section 15 Stock Plaintiffs did not know, and in the exercise of reasonable diligence could not have known, of the inaccurate statements and omissions in the IPO Prospectus.

422. The Section 15 Stock Plaintiffs have sustained damages as a result of the inaccurate statements and omissions in the IPO Prospectus, for which they are entitled to compensation.

423. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years of the IPO.

424. Pursuant to Section 15 of the Securities Act, the Section 15 Stock Defendants are jointly and severally liable with and to the same extent as Refco, for those entities' violations of Section 12(a)(2) of the Securities Act.

XI. DEFENDANTS' FRAUDULENT SCHEME

425. The allegations that follow describe the acts, practices, and a course of conduct engaged in by various Defendants that operated as a fraud on the investing public. As described in more detail below, Defendants Bennett, Maggio, Trosten, Grant, Mayer Brown, Collins and others devised and participated in a fraudulent scheme consisting of a series of sham related-party "loans" that were timed to occur at the end of Refco's financial periods from 1999 through 2005. This scheme was designed to (and did) enable Refco to temporarily transfer uncollectible

debt off of the Company's books by shifting it between wholly-owned Company subsidiaries, related-party companies owned and controlled by Bennett, and several third party customers of Refco. The goal of this scheme was to disguise hundreds of millions of dollars of uncollectible receivables owed to the Company so that the Company could fraudulently avoid taking hundreds of millions of dollars in write-offs.

426. As these Defendants knew, such large write-offs would have been catastrophic to the Company because, among other things, they would have (a) eliminated the Company's members' equity (and thus eliminated any chance for Refco's insiders to accumulate huge personal fortunes); (b) revealed that the Company's business plan and operations exposed the Company to the very same enormous trading and market risks undertaken by its customers; (c) created a host of regulatory capital problems for the Company; and (d) wiped out the Company's income and profits by revealing that the numbers the Company reported as positive were actually negative.

427. Bennett, Trosten and Grant have been indicted by a Grand Jury for their roles in this fraudulent scheme, and are awaiting trial on numerous criminal charges, including securities fraud and conspiracy to commit securities fraud.

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

428. During the 1970s, Bennett was employed by several international commercial banks and developed significant experience in arranging financing for commodities investors. When Bennett was hired as the Company's CFO in 1983, he put his experience into practice by creating a customer finance unit at Refco. Formed in 1982, the customer finance unit extended loans from the Company to its trading clients. These loans allowed the Company's customers to operate on "margin" and leverage their operating capital into increasingly larger trades in the

commodities, derivatives, and futures markets. These larger trades, in turn, generated larger commissions for the Company and led to dramatic increases in its revenues, income and profits.

429. The Company soon became dependent upon the increased flow of commissions, revenues and profits that these loans generated. In order to continue increasing its revenues and profits, the Company started extending credit to its customers based on little or no assessment of the customer's credit-worthiness. As reported in Bloomberg Markets in February 2006, a Refco broker stated that "Refco was like a used-car dealer: no money down, no credit, no problem."

430. While these "no questions asked" loans allowed the Company to increase its commissions, revenues and profits, they also exposed it to the severe trading risks undertaken by its clients – clients who often took huge positions in the volatile financial markets around the globe. Thus, if the Company's clients suffered significant trading losses rendering them unable to repay their loans to the Company, the Company would be forced, according to applicable accounting rules and regulations, to "write off" the amounts of the loans from its books. In short, by extending easily-obtained financing to its customers, the Company had created a business model that depended in large part upon the success its own customers achieved making trades in various financial markets around the world.

431. The inherent dangers posed by this business model materialized – though were not revealed to the public – in 1997 and 1998 when a number of the Company's most significant customers (and the Company itself) suffered massive trading losses in a number of worldwide market collapses. First, in what became known as the "Asian Financial Crisis," two rounds of currency devaluations in Southeast Asia caused the Company and its customers to suffer severe losses. In July 1997, the Thai baht, Malaysian ringgit, Philippine peso, and Indonesian rupiah suffered sharp declines in value. In late 1997, the Taiwan dollar, South Korean won, Brazilian

real, Singaporean dollar, and Hong Kong dollar suffered similar sharp declines. Several of the Company's customers had made large speculative trading "bets" that these currencies would be supported by their respective governments and kept at a fixed value against the United States dollar. When these gambles failed, the customers lost huge sums of money and were unable to repay hundreds of millions of dollars worth of loans they had received from the Company. For instance, as reported in Bloomberg Markets in February 2006, "a person familiar with an internal review that Refco conducted" in October 2005 noted that Refco was unable to collect more than $300 million in amounts owed from eight customers who suffered severe losses in connection with the Asian Financial Crisis.

432. Second, in early 1998, international prices for oil, copper, gold and aluminum began to decline. The Russian economy was hit especially hard by these price declines because nearly two-thirds of Russia's hard currency earnings depended on exports of oil and non-ferrous metals. As the Russian economy weakened, its tax revenues declined and the Russian government was forced to increase the interest rates on its domestic bonds in order to attract foreign capital. By July 1998, the interest rates on Russian ruble-backed domestic bonds had increased to a staggering 70% and, notwithstanding the increasing risk that the Russian government would default on its repayment obligations, foreign speculators, including Refco and many of its customers, took large positions in those bonds. In addition, many Refco customers purchased hundreds of millions of dollars in "ruble futures" that were due to mature in the Fall of 1998. To fund these purchases, many of the Company's customers drew down on the credit lines extended to them by the Company itself.

433. In essence, Refco and its customers were speculating that the Russian government would honor its debt obligations and keep the ruble at a fixed value relative to the U.S. dollar.

This speculation proved ill-founded. On August 17, 1998, the Russian government defaulted on its domestic debt and devalued the ruble. These actions caused huge financial reversals and hundreds of millions of dollars in losses for Refco and many of its customers. Refco itself lost $50 million in a single transaction in 1998 on an investment in Russian bonds.

434. In addition to the foregoing, BAWAG has publicly disclosed that it experienced approximately $1.2 billion in trading losses in accounts maintained at Refco. According to published reports, and confirmed by Lead Plaintiffs' independent investigation, these losses occurred primarily in the trading accounts of Ross Capital, where Wolfgang Flottl had engaged in high-risk currency speculation which resulted in huge losses when the Japanese yen declined for eight straight weeks in 2000. Upon information and belief, a material percentage of the capital employed by Flottl in this speculation was provided by BAWAG and further extended on margin loans by Refco, thus creating both a significant loss for BAWAG and a significant bad debt owed to Refco.

435. In the wake of these financial reversals, many of Refco's customers were unwilling or unable to repay the huge "margin" loans that had been extended to them by Refco—often with little or no investigation into the customer's creditworthiness. Coupled with the huge trading losses that Refco had suffered in its own proprietary trading accounts, the uncollectible margin loans created a dire financial crisis for Refco. The Company now had hundreds of millions of dollars in unrecoverable debt and losses that would need to be "written off." However, revealing these losses and properly accounting for them as write-offs would have threatened the Company's very survival.

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

436. In September 1998, on the heels of the two world-wide financial catastrophes

described above, Bennett was promoted from CFO to the Chairman and CEO of the Company. As a former CFO with over seventeen years of experience at the Company and over twenty-eight years of experience in the fields of commodity and commercial lending, Bennett knew that revealing the uncollectible loans and the huge trading losses would be catastrophic to the Company he now led. Indeed, as Bennett knew, if these loans and trading losses were revealed and properly accounted for, the resulting write-offs would threaten the Company's very survival.

437. The "life threatening" nature of the financial problems facing Refco at this time is discussed in a lawsuit filed on August 5, 2004 in the Northern District of Illinois by Thomas H. Dittmer, a former CEO of Refco, against Edwin L. Cox, Jr., a commodities trader with extensive dealings with Refco, captioned Thomas H. Dittmer v. Edwin L. Cox, Jr., No. 5185 (N.D. Ill.). In that lawsuit, Dittmer alleges that "Cox undertook to evaluate Refco's financial status in connection with accounts at Refco co-owned by Cox and Dittmer." According to that complaint:

> Prior to August 1999, Cox advised Dittmer that Dittmer's continued ownership of equity interests in Refco would cause Dittmer to suffer significant financial loss and that it would be in Dittmer's best interest to sell his interests in Refco as quickly as possible.

(Emphasis added.) In a facsimile attached to Dittmer's Complaint and dated August 4, 2004, Cox wrote to Dittmer and stated:

> I am shocked that at this point in time you suddenly take the position that I have no claim involving Refco. You have an awfully short memory! I took risk, put in capital, endured a lot of grief, spent the time, hired the people, negotiated resolutions to your CFTC problems, and generally attempted to protect you from liabilities, which we both know were life threatening.

(Emphasis added.)

438. Not only was the situation dire for Refco, but as Collins and Mayer Brown knew, the collapse of Refco—Collins' crown jewel client—would have drastically reduced the annual "billings" that Collins generated at Mayer Brown, and would have had negatively impacted

Collins' personal compensation.

439. Beginning no later than 1997, Bennett, Collins and Mayer Brown, among others, embarked on a scheme to conceal the losses the Company had suffered and the uncollectible receivables owed to it by its customers. Rather than write off these losses, they simply transferred the uncollectible receivables owed to the Company onto the books of RGHI, which Bennett owned and controlled. These uncollectible receivables were then recorded on the Company's books as a receivable owed to it by RGHI, instead of as uncollectible receivables owed by the Company's customers.

440. For example, as discussed above and in the Examiner's Report, Victor Niederhoffer was one of the Refco customers that sustained significant trading losses in the Asian Financial Crisis and was unwilling or unable to repay the margin loans extended to him by Refco. In October 1997, Collins, Mayer Brown and Bennett negotiated and documented a "settlement" with Niederhoffer whereby Niederhoffer would liquidate his accounts at Refco and turn over the proceeds to the Company. In return, Refco committed in writing—in documents prepared by Collins and Mayer Brown—to release Niederhoffer from liability for the much larger, uncollectible amounts owed by Niederhoffer to Refco (approximately $71 million). In order to conceal the Niederhoffer losses and remove them from Refco's books, Collins, Mayer Brown and Bennett then caused Refco to assign to RGHI the "receivable" representing Niederhoffer's uncollectible debt (which Collins and Mayer Brown knew that Refco had agreed not to pursue). In exchange for receiving this worthless receivable, RGHI agreed—in documents drafted by Mayer Brown—to pay Refco the amount of the uncollectible debt. Through these machinations, the scheme designed and implemented by Collins, Mayer Brown and Bennett fraudulently transferred Niederhoffer's uncollectible debt off of Refco's books and converted it

into a receivable owed from RGHI to Refco.

441. As Collins and Mayer Brown knew, Refco's transfer of the Niederhoffer receivable to RGHI was a sham transaction that lacked any legitimate business purpose. As an initial matter, the Niederhoffer debt was unenforceable pursuant to written documents Collins himself prepared. There was no legitimate reason for RGHI to agree to pay $71 million to Refco in return for the "right" to collect an unenforceable debt of the same amount. To the contrary, the transaction reeked of fraud and there is only one rational inference as to why the transfer was made: to remove the problematic debt from Refco's books and replace it with one that appeared collectible.

442. Because Collins and Mayer Brown represented both Refco ***and*** RGHI in these transactions, and because Bennett was a principal of both entities, they knew that RGHI was a non-operating company without significant cash flow and that it was unable to pay the receivable it owed to Refco. Likewise, Bennett knew – and Mayer Brown and Collins either knew or recklessly disregarded – that Refco could (and did) use RGHI as an off-balance sheet entity to hide uncollectible debts. Nonetheless, Collins and Mayer Brown participated in the transaction, collected their legal fees, and for years concealed the transaction and the uncollectibility of the receivable from public view in their drafting and review of Refco's public disclosures.

443. Collins and Mayer Brown remained involved with the Niederhoffer debts after the initial arrangements were made to fraudulently transfer them off of Refco's books. According to the Examiner's Report, and based on the Examiner's review of Mayer Brown's time records, in connection with dealing with various investigations initiated by commodities regulators regarding the Niederhoffer debts, Collins (a) reviewed Refco's financial statements and (b) revised footnotes to financial statements that were being delivered to regulators.

444. Collins and Mayer Brown also were involved in certain tax issues relating to the losses, which were being handled by Ernst & Young LLP ("E&Y"). Under the tax laws, if the receivable representing the Niederhoffer losses became worthless after it was "sold" to RGHI, it would have to be reflected as a loss on Refco's books. To avoid recognizing the loss, Refco repeatedly represented to E&Y that the receivable for the Niederhoffer losses was not worthless. A handwritten document prepared by E&Y and dated November 20, 1997—only a few weeks after Collins had finished the documentation used to remove the Niederhoffer loan from Refco's book—states that an E&Y employee had discussed the Niederhoffer debts with another E&Y employee and questioned:

> Whether we could be viewed as somehow being an accessory to some type of fraud. [E&Y employee] felt that as long as we never give them any accounting advice and our tax returns are prepared correctly we should not have a concern.

(Emphasis added.) This note, prepared by E&Y employees far less familiar with Refco than Collins, demonstrates that a sophisticated professional possessing the level of familiarity with Refco that Collins did, must have known that the treatment of the Niederhoffer losses was garden-variety fraud.

445. Collins and Mayer Brown continued to be involved in issues relating to the Niederhoffer losses into 1999. For instance, an internal E&Y Memorandum dated February 9, 1999 states:

> I communicated to [Refco executive] Steve Rossi today that we did not agree with the representations in the loan, pledge, and purchase agreements which stated that there were no undisclosed liabilities on the audited RGL [Refco Group] financial statements and that all tax returns and withholding taxes had been filed/paid. I also told him that if asked by Mayer Brown or BAWAG we would need to express our views . . . On February 10th [sic] Jim Barry of Mayer Brown asked if I was okay with Section 2.16 of the agreement regarding Taxes . . . I told Jim that we were not making any representations regarding that Section . . . I also told him that there

may very well be material tax issues and that he should discuss these with the client and with Joe Collins who is already aware of some of them.

(Emphasis added.) According to the Examiner's Report, in March 1999, Collins billed extensive time on the Niederhoffer matter discussing issues such as "bad debt analysis" and conversations with "SR" [Rossi] regarding background arguments for bad debt treatment.

446. During this same time frame, E&Y sent several memoranda to Refco that explained the treatment of the RGHI receivable, including one dated March 8, 1999 that stated "[Refco] will not write this receivable off on its separate audited income statement on the theory that this receivable will be satisfied by… [RGHI] at some point, perhaps upon a sale of the business." The Examiner concluded that "[b]ecause Mayer Brown and E&Y were working in tandem on these issues, it could be inferred that Mayer Brown was aware of the matters contained in the memoranda E&Y sent to Refco."

447. Documents in Collins' handwriting demonstrate that by no later than October 1999, Collins and Mayer Brown had knowledge of more than one receivable owed by RGHI to Refco. An October 15, 1999 letter from Bennett to Collins, attaching Refco's unaudited balance sheet as of May 31, 1999 and its consolidated and audited financial statements for the fiscal year ended February 28, 1999, and sent to Collins at his New York office, states that RGHI's "capital (i.e., net worth) is represented by the value of its investment in [Refco]." This statement is bracketed, and in handwriting that the Examiner determined was consistent with Collins', the statement ***"Minus Loans to RGH[I]"*** is written. These handwritten notes demonstrate that Collins knew that RGHI owed money to Refco, and Collins' use of the plural "loans" demonstrates that he was aware of more than just the Niederhoffer bad debts that he helped transfer to RGHI.

448. By June 2002, Mayer Brown was aware that the RGHI receivable totaled at least

$350 million. In a memorandum to files dated February 11, 2002, a Mayer Brown attorney discussed a possible sale of a portion of RGHI to a third-party, and noted that the sale price would be approximately $700 million with "$350,000,000 to be paid by the assumption of liabilities of [RGHI]." Moreover, a purchase agreement drafted by Mayer Brown and dated June 11, 2002, states:

> The Company agrees that $350 million of the Purchase Price for the Participation Right shall be used or caused to be used for the retirement of inter-company debt of [RGHI].

(Double Underline in Original.) According to the Examiner's Report, Mayer Brown time records reflect that on June 11, 2002, Collins spoke with Bennett regarding, among other things, revisions to documents and a price adjustment and revised the purchase agreement in respect of credits to the purchase price.

449. Upon information and belief, Defendant Maggio was also directly involved with developing and implementing this scheme to transfer the customer receivables to RGHI.

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

450. Defendants Bennett and Maggio and others knew that, under applicable accounting rules and regulations, the existence of a multi-hundred million dollar receivable owed to the Company by a related-party entity such as RGHI would have to be disclosed as a "related party transaction." This disclosure, in turn, would attract the attention of, among others, investors and regulators, who view related-party transactions with suspicion because they are often used to carry out financial statement manipulations. These Defendants knew that such a huge related-party receivable could be recognized for what it was: uncollectible debt that had to be written off, and compelling evidence that the Company's business model was much less robust than previously perceived.

451. In order to avoid this result, Bennett and Maggio—again with help from their "go to guy" Collins and Mayer Brown—devised a remarkably simple scheme that should have been obvious to all of the other Defendants (all of whom had unfettered access to the Company's books and records at and before the time of their securities law violations). As described below, pursuant to documents negotiated and drafted by Mayer Brown, Refco engaged in a series of "loan" transactions at the end of each fiscal year from 2000 through 2005, and several fiscal quarters as well, to temporarily pay down the receivable owed to Refco from RGHI and replace it on the Company's books with receivables purportedly owed by BAWAG or third-party customers. More specifically, a few days before Refco closed its books for each financial period, it "loaned" hundreds of millions of dollars from its subsidiary Refco Capital to BAWAG and/or third parties which simultaneously "loaned" the same amount to RGHI (though in point of fact, as discussed below, no money actually changed hands in these "loans"). Refco itself served as the guarantor of the loans between the third parties and RGHI. RGHI then used the proceeds from the "loans" to temporarily pay off the uncollectible receivables it owed to Refco. Then, just days after the financial period ended and Refco closed its books, these transactions were reversed, the "loans" were repaid, the third parties were paid a fee for their participation in the risk-free "loans," and the uncollectible receivables from RGHI were returned to Refco's books.

452. The scheme involved the repeated manipulation of huge sums of money, and occurred with clockwork-like regularity straddling the end of each of Refco's financial reporting periods. Each of these sham transactions followed a similar format, and each was designed so that the Company could fraudulently avoid taking hundreds of millions of dollars of write-offs for receivables that could not be collected. Mayer Brown was directly involved in no less than seventeen of these sham transactions between 2000 and 2005, sixteen of which were timed to

occur within a few days bracketing the ends of Refco's financial periods. Mayer Brown's involvement included negotiating the terms of the loans, drafting and revising the documents relating to the loans, transmitting the documents to the participants, and retaining custody of and distributing the executed copies of the documents. In at least one instance, Mayer Brown even represented the counterparty to the loans, in addition to representing Refco and RGHI.

453. The counterparties to Refco's round-trip loan transactions included Customer X, BAWAG, CIM Ventures, EMF, Delta Flyer, Beckenham, and CS Land. The transactions with each of these parties are described in detail below.

1. <u>The Fraudulent Transactions With Customer X</u>

454. Lead Plaintiffs have obtained and reviewed numerous loan agreements, guarantees, correspondence and other documents relating to the transactions described herein. Lead Plaintiffs have also interviewed representatives of Customer X, which was involved in at least ten of these transactions with Refco between February 2002 and August 2005. These representatives include the founder and principal of Customer X (referred to herein as "Principal A"). Principal A has direct knowledge of the origin and structure of approximately ten transactions that took place between Refco and Customer X between February 2002 and August 2005.

455. Principal A has informed Lead Counsel that, beginning in or about 1999, Customer X used Refco as its prime broker, and conducted hundreds of millions of dollars of business with the Company in that capacity.

456. According to Principal A, in or about early February 2002, he received a telephone call from Peter McCarthy ("McCarthy"), an executive officer of Refco and Customer X's primary contact at the Company. McCarthy asked Principal A whether Customer X would be interested in participating in a "trade." McCarthy stated that a group of other people were

already involved with these trades, and Refco wanted to get Customer X involved as well. As for the details of the "trade," McCarthy told Principal A to "talk to Sandy Maggio."

457. Shortly thereafter, Principal A spoke with Defendant Maggio, who explained some, but not all, of the details of the proposed transaction. Maggio stated that the transaction involved a loan from Refco Capital to Customer X and a simultaneous loan from Customer X to RGHI, which would then be reversed several days later. For its participation in this transaction, Maggio explained, Customer X would be entitled to a "spread" – the difference between the interest rate that would be paid by Customer X to Refco Capital, and the slightly higher rate that would be paid by RGHI to Customer X. Maggio told Principal A to speak with Refco's attorneys at Mayer Brown for additional information on the structure and terms of the loan.

458. Maggio put Principal A in touch with Koury, a senior associate who worked in Mayer Brown's "Derivatives Practice Group" under the supervision of Collins. Koury explained in detail the structure of the transactions suggested by Maggio, and provided Principal A a set of transaction documents, including loan agreements and promissory notes. Principal A has told Lead Counsel that he was intent on obtaining some guarantees for Customer X's participation in the transaction, particularly given that Customer X would make a relatively small profit in a transaction in which it would have several hundred million dollars at risk. Among the documents Mayer Brown drafted and provided to Principal A on or about February 25, 2002 was a side letter from Refco Group, whereby it "unconditionally and absolutely guarantee[d]" to Customer X "the prompt and complete payment and performance when due, whether by acceleration or otherwise, of all obligations and liabilities" of RGHI pursuant to the loan agreement and related note. The guarantee was signed by Defendant Bennett, as President and CEO of Refco Group.

459. As described below, between February 2002 and August 2005, Customer X participated in ten separate transactions among itself, Refco, Refco Capital and RGHI. Mayer Brown drafted all of the documentation for these transactions, and indeed most of the documents bear a "footer" identifying the documents as being prepared by Mayer Brown.

i. The February 2002 Transaction

460. The first set of round-trip "loan" transactions involving Customer X occurred shortly before the close of the Company's fiscal year 2002. These transactions are memorialized in documents prepared by Mayer Brown and enclosed with a February 26, 2002 cover memorandum (the "February 26, 2002 Memorandum") from Mayer Brown to Principal A. The deal documents pertain to four components of an integrated transaction.

461. *First*, on or about February 25, 2002, Refco Capital loaned Customer X the sum of $325,000,000. The loan was to be repaid within two weeks, that is, by March 4, 2002. This loan is reflected in a "Loan Agreement" and "Note," each dated February 25, 2002, between Refco Capital and Customer X (here, and for each succeeding transaction, the "Refco Capital/Customer X Loan Agreement"). The agreement provided that "interest shall accrue on the Loan Amount outstanding from time to time at a rate per annum equal to 1.8375%, calculated on the basis of a year consisting of 360 days and paid for actual days elapsed." David Weaver, the Chief Administrative Officer at Refco Capital, signed the Refco Capital/Customer X Loan Agreement.

462. Principal A has told Lead Counsel that neither Refco nor Mayer Brown ever informed him that RGHI was not a Refco corporate entity but, rather, a separate holding company 100% owned by Defendants Bennett and Grant with no corporate relationship with Refco. To the contrary, the Refco Capital/Customer X Loan Agreement drafted by Mayer Brown (and the papers for each succeeding set of loans), specifically defined the term "Refco

Parties" to include RGHI, even though Mayer Brown frequently provided substantial legal services to Bennett and RGHI and knew it was not a Refco entity.

463. The purpose and function of this loan to Customer X was plain from the face of the loan document. The Refco Capital/Customer X Loan Agreement (and each of the succeeding Refco Capital/Customer X Loan Agreements) contained an affirmative "use of proceeds" covenant that obligated Customer X to "[u]se the Loan proceeds only for funding a corresponding loan to [RGHI]."

464. *Second*, on the same day that the parties signed the Refco Capital/Customer X Loan Agreement they signed a loan agreement between Customer X and RGHI (here, and for each succeeding transaction, the "Customer X/RGHI Loan Agreement"), for the same principal amount of $325,000,000. As with the Refco Capital/Customer X loan, the repayment date was set as March 4, 2002.

465. The Customer X/RGHI Loan Agreement provided that "interest shall accrue on the Loan Amount outstanding from time to time at a rate per annum equal to 2.8375% calculated on the basis of a year consisting of 360 days and paid for actual days elapsed." Thus, the interest rate on this loan was 100 basis points higher than the interest rate on the loan from Refco Capital to Customer X.

466. The Customer X/RGHI Loan Agreement also defined RGHI as one of the "Refco Parties." Further, and consistent with what Principal A told Lead Counsel regarding his understanding that RGHI was, in fact, a Refco affiliate, the agreement provided that legal notices to RGHI were to be sent to Refco Capital (care of Refco Capital's then-Chief Administrative Officer). Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

467. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group

pursuant to a guaranty dated February 25, 2002, and signed by Bennett. The guaranty assured Customer X that Refco would make it whole if RGHI defaulted on the $325,000,000 loan.

468. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

469. The $325,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company, and the loans were unwound on or about March 4, 2002, such that the $325,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company. Among other evidence, Lead Counsel has reviewed an internal Refco document confirming that the Company credited $325,000,000 to the account of Customer X on February 25, 2002.

470. According to Principal A, Customer X never physically received the principal proceeds of this loan (or any of the loans described below). To the contrary, the funds never left Refco. Rather, on the date the loan agreements were signed, Refco Capital caused the funds to be transferred into an account maintained in Customer X's name at Refco, and then the funds were immediately transferred from that account to RGHI. When the repayment date on this loan (and those that followed) arrived, this pattern was reversed so that the funds were transferred from RGHI back into Customer X's account, and then immediately transferred from that account back to Refco Capital. As confirmed by Principal A, Customer X received its fee – the 100 basis point "spread" on the first loan and, as described below, 75 basis points in connection with the later loans – separately. Notably, in each instance, those payments of net interest to Customer X were made by ***Refco Capital***, not RGHI.

ii. <u>The February 2003 Transaction</u>

471. This series of transactions was repeated at the close of the Company's fiscal year ended February 28, 2003, pursuant to documents prepared by Mayer Brown.

472. *First*, on or about February 21, 2003, Refco Capital loaned Customer X the sum of $500,000,000. The loan was to be repaid within two weeks, that is, by March 4, 2003. This loan is reflected in a "Loan Agreement" and "Note," each dated February 21, 2003, between Refco Capital and Customer X. The Refco Capital/Customer X Loan Agreement provides that "interest shall accrue on the Loan Amount outstanding from time to time at a rate per annum equal to 1.31%, calculated on the basis of a year consisting of 360 days and paid for actual days elapsed." Notices to Refco Capital under the Refco Capital/Customer X Loan Agreement were to be addressed to Defendant Maggio, who signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

473. *Second*, on the same day that the parties signed the Refco Capital/Customer X Loan Agreement, they signed a loan agreement between Customer X and RGHI, for the same principal amount of $500,000,000. The repayment date on this loan was also March 4, 2003. The Customer X/RGHI Loan Agreement provided that "interest shall accrue on the Loan Amount outstanding from time to time at a rate per annum equal to 2.06% calculated on the basis of a year consisting of 360 days and paid for actual days elapsed." Thus, the interest rate on this loan was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement provided that legal notice to RGHI be sent to Refco Capital, "Attention: Santo C. Maggio." Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

474. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated February 21, 2003, and signed by Bennett.

475. The $500,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about March 4, 2003, such that the $500,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

iii. <u>The February 2004 Transaction</u>

476. This series of transactions was repeated at the close of the Company's fiscal year ended February 29, 2004, pursuant to documents prepared by Mayer Brown.

477. *First*, on or about February 20, 2004, Refco Capital loaned Customer X the sum of $720,000,000. The loan was to be repaid within two weeks, that is, by March 4, 2004. This loan is reflected in a "Loan Agreement" and "Note," each dated February 20, 2004, between Refco Capital and Customer X. The Refco Capital/Customer X Loan Agreement provides for interest of 1.06% per annum for the days the loan was outstanding. Notices to Refco Capital under the Refco Capital/Customer X Loan Agreement were to be addressed to Defendant Maggio, who signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

478. *Second*, on the same day that the parties signed the Refco Capital/Customer X Loan Agreement they signed a loan agreement between Customer X and RGHI, for the same principal amount of $720,000,000. The repayment date on this loan was also March 4, 2004. The Customer X/RGHI Loan Agreement provided for interest at an annual rate of 1.81%, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement provided that legal notice to RGHI be sent to Refco Capital, "Attention: Santo C. Maggio." Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

479. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated February 20, 2004, also signed by Defendant Bennett.

480. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

481. The $720,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about March 4, 2004, such that the $720,000,000 once again appeared on the Company's books as a receivable owed by RGHI to the Company.

iv. The May 2004 Transaction

482. This series of transactions was repeated at the close of the Company's fiscal quarter ended May 31, 2004, pursuant to documents prepared by Koury of Mayer Brown. Upon information and belief, this was done with intent by Defendants Bennett, Maggio and others to generate false financial statements for use in connection with the Bond registration process.

483. *First*, on or about May 27, 2004, Refco Capital loaned Customer X the sum of $700,000,000. The loan was to be repaid within two weeks, that is, by June 7, 2004. The Refco Capital/Customer X Loan Agreement contained substantially similar provisions, including the "use of proceeds" covenant obligating Customer X to loan the $700,000,000 to RGHI, the interest rate spread, the definition of "Refco Parties," and notice provisions as contained in the Refco Capital/Customer X Loan Agreements described above.

484. *Second*, as in the prior transactions, the parties signed a Customer X/RGHI Loan Agreement, also dated May 27, 2004, whereby Customer X loaned RGHI the same principal amount of $700,000,000, with the same repayment date of June 7, 2004. The interest rate for this loan was 1.81% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement provided that

legal notice to RGHI be sent to Refco Capital, "Attention: Santo C. Maggio." Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

485. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated May 27, 2004, and signed by Bennett.

486. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

487. The $700,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about June 7, 2004, such that the $700,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

v. <u>The August 2004 Transaction</u>

488. This series of transactions was repeated at the close of the Company's fiscal quarter ended August 31, 2004, pursuant to documents prepared by Mayer Brown. Upon information and belief, this was done by Defendants Bennett and Maggio and others with intent to generate false financial statements for use in connection with the Bond registration process.

489. *First*, on or about August 25, 2004, Refco Capital loaned Customer X the sum of $485,000,000. The loan was to be repaid within two weeks, that is, by September 7, 2004. The Refco Capital/Customer X Loan Agreement for this transaction has a typewritten amount of $475,000,000, but that amount was crossed out and replaced in handwriting with the amount of $485,000,000, and initialed by Principal A. The Refco Capital/Customer X Loan Agreement provided for interest of 1.50% per annum, and contained the same "use of proceeds" covenant, definition of "Refco Parties" and notice provision as the Refco Capital/Customer X Loan

Agreements described above. Defendant Maggio signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

490. *Second*, as in the prior transactions, the parties signed a Customer X/RGHI Loan Agreement, also dated August 25, 2004, whereby Customer X loaned RGHI the same principal amount of $485,000,000, with the same repayment date of September 7, 2004. The interest rate for this loan was 2.25% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement contained the same definition of "Refco Parties" and notice provisions as the Customer X/RGHI Loan Agreements described above. Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

491. The Customer X/RGHI Loan Agreement and accompanying note have a typewritten date of August 26, 2004, but that date was crossed out and replaced in handwriting with the date of August 25, 2004. As with the Refco Capital/Customer X Loan Agreement, the Customer X/RGHI Loan Agreement has a typewritten amount of $475,000,000, but that amount was crossed out and replaced in handwriting with the amount of $485,000,000. These changes were initialed both by Principal A and Defendant Bennett, as were a number of other handwritten changes to the document.

492. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guarantee dated August 25, 2004, and signed by Bennett. This guaranty has a typewritten date of August 26, 2004, which was crossed out and replaced with August 25, 2004. This change was initialed by both Principal A and Bennett.

493. The $485,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were

unwound on or about September 7, 2004, such that the $485,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

vi. The November 2004 Transaction

494. This series of transactions was repeated at the close of the Company's fiscal quarter ended November 30, 2004, pursuant to documents prepared by Mayer Brown. Upon information and belief, this was done with intent to generate false financial statements for use in connection with the Bond registration process.

495. *First*, on or about November 26, 2004, Refco Capital loaned Customer X the sum of $545,000,000. The loan was to be repaid within two weeks, that is, by December 3, 2004. The Refco Capital/Customer X Loan Agreement for this transaction provides for interest of 2.00% per annum and contained the same notice provision as contained in the Refco Capital/Customer X Loan Agreements described above. Defendant Maggio signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

496. *Second*, also on November 26, 2004, the parties signed a Customer X/RGHI Loan Agreement for the same principal amount of $545,000,000. The repayment date on this loan was also December 3, 2004. The interest rate for this loan was to be 2.75% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement contained the same notice provisions as the Customer X/RGHI Loan Agreements described above. Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

497. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated November 26, 2004, and signed by Bennett.

498. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement

or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

499. The $545,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about December 3, 2004, such that the $545,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

vii. <u>The December 2004 Transaction</u>

500. This series of transactions was repeated in December 2004, pursuant to documents prepared by Mayer Brown.

501. *First*, on or about December 30, 2004, Refco Capital loaned Customer X the sum of $550,000,000. The loan was to be repaid within one week, that is, by January 4, 2005. The Refco Capital/Customer X Loan Agreement for this transaction provided for interest of 2.25% per annum, and contained the same notice provisions as the Refco Capital/Customer X Loan Agreements described above. Defendant Maggio signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

502. *Second*, also on December 30, 2004, the parties signed a Customer X/RGHI Loan Agreement for the same principal amount of $550,000,000. The repayment date on this loan was also January 4, 2005. The interest rate for this loan was to be 3.00% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement was signed by Bennett on behalf of RGHI.

503. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated December 30, 2004, and signed by Bennett.

504. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement

or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

505. The $550,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about January 4, 2004 such that the $550,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

viii. The February 2005 Transaction

506. This series of transactions was repeated at the close of the Company's fiscal year 2005, pursuant to documents prepared by Mayer Brown.

507. *First*, on or about February 23, 2005, Refco Capital loaned Customer X the sum of $345,000,000. The loan was to be repaid within two weeks, that is, by March 8, 2005. This loan is reflected in a "Loan Agreement," "Note," and "First Amendment to Loan Agreement," each dated February 23, 2005, between Refco Capital and Customer X. The Refco Capital/Customer X Loan Agreement provided for an interest rate of 2.50% per annum. The original Refco Capital/Customer X Loan Agreement stated that the amount of the loan was $335,000,000, but pursuant to the First Amendment To Loan Agreement, the amount was increased to $345,000,000. The Refco Capital/Customer X Loan Agreement contained the same "use of proceeds" covenant, definition of "Refco Parties" and notice provisions as the Refco Capital/Customer X Loan Agreements described above. Defendant Maggio signed the Refco Capital/Customer X Loan Agreement and First Amendment To Loan Agreement on behalf of Refco Capital.

508. *Second*, also on February 23, 2005, the parties signed a Customer X/RGHI Loan Agreement for the same principal amount of $345,000,000. The repayment date on this loan was also March 8, 2005. The Customer X/RGHI Loan Agreement provided for interest at a rate of

3.25% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The original Customer X/RGHI Loan Agreement stated that the amount of the loan was $335,000,000, but, as with the Refco Capital/Customer X loan documents, the amount was increased to $345,000,000. The Customer X/RGHI Loan Agreement contained the same definition of "Refco Parties" and notice provisions as the Customer X/RGHI Loan Agreements described above. Defendant Bennett signed the Customer X/RGHI Loan Agreement and First Amendment To Loan Agreement on behalf of RGHI.

509. *Third*, the loan from Customer X to RGHI was guaranteed by Refco Group pursuant to a guaranty dated February 23, 2005, and signed by Bennett.

510. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

511. The $345,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about March 8, 2005, such that the $345,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

ix. <u>The May 2005 Transaction</u>

512. This series of transactions was repeated at the close of Refco's fiscal quarter ending May 31, 2005, pursuant to documents prepared by Mayer Brown. Upon information and belief, this was done with intent to generate false financial statements for use in connection with the upcoming IPO. According to testimony and/or documents apparently presented to the grand jury and as confirmed to Lead Counsel in substance by Principal A:

(a) On or about May 25, 2005, Defendant Bennett caused the Company,

through Refco Capital, to loan Customer X approximately $450 million. The loan was to be repaid within two weeks, that is, by June 6, 2005.

(b) On the same day that the parties signed the Loan Agreement between Refco Capital and Customer X, they signed a loan agreement between Customer X and RGHI, for the same principal amount of $450 million. The repayment date on this loan was also June 6, 2005.

(c) The loan from Customer X to RGHI was signed by Bennett on behalf of RGHI. The interest rate on the loan was 75 basis points higher than the interest rate on the loan from the Company to Customer X.

(d) The loan between Customer X and RGHI was guaranteed by the Company pursuant to a guaranty signed by Bennett.

(e) The loans were unwound on or about June 6, 2005.

513. According to testimony and/or documents apparently presented to the grand jury that returned the indictment against Bennett, the $450,000,000 loan that originated with Refco Capital was used to pay down the receivable owed from RGHI to the Company. After it was unwound, the $450,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

x. <u>The August 2005 Transaction</u>

514. This series of transactions was repeated at the close of Refco's quarter ending August 31, 2005, the first quarter close after the Company completed the IPO. All of the documentation for the transactions was prepared by Mayer Brown.

515. *First*, on or about August 26, 2005, Refco Capital loaned Customer X the sum of $420,000,000. The loan was to be repaid within two weeks, that is, by September 6, 2005. The Refco Capital/Customer X Loan Agreement for this transaction provided for an interest rate of

3.50% per annum and contained the same "use of proceeds" covenant, definition of "Refco Parties," and notice provisions as the Refco Capital/Customer X Loan Agreements described above. Defendant Maggio signed the Refco Capital/Customer X Loan Agreement on behalf of Refco Capital.

516. *Second*, also on August 26, 2005, the parties signed a Customer X/RGHI Loan Agreement for the same principal amount of $420,000,000. The repayment date on this loan was also September 6, 2005. The interest rate for this loan was to be 4.25% per annum, which was 75 basis points higher than the interest rate on the loan from Refco Capital to Customer X. The Customer X/RGHI Loan Agreement contained the same notice provisions as the Customer X/RGHI Loan Agreements described above. Defendant Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

517. *Third*, the loan between Customer X and RGHI was guaranteed by Refco Group pursuant to a guaranty dated August 26, 2005, and signed by Bennett.

518. *Fourth*, Refco Group agreed to indemnify Customer X for loss or liability resulting from third party claims arising out of the Refco Capital/Customer X Loan Agreement or the Customer X/RGHI Loan Agreement. Bennett signed the indemnity letter on behalf of Refco Group.

519. The $420,000,000 in proceeds that originated with Refco Capital was used to pay down at least a portion of the receivable owed from RGHI to the Company. The loans were unwound on or about September 6, 2005, such that the $420,000,000 debt once again appeared on the Company's books as a receivable owed by RGHI to the Company.

2. The Fraudulent Transactions With BAWAG

520. BAWAG was directly involved in at least six sham "loan" transactions with Refco and RGHI, which occurred at the end of each of Refco's fiscal years from February 2000

through February 2005.

521. These fraudulent transactions consisted of four components. First, Refco Capital would transfer hundreds of millions of dollars to BAWAG, which BAWAG then immediately "loaned" (apparently without any of the formal loan documentation utilized in the Customer X transactions) to RGHI. Second, BAWAG would extend an additional smaller "loan" – between $40 million and $90 million (again, apparently without any formal documentation) – directly to RGHI at a nominal interest rate. Third, RGHI would use these funds to temporarily pay down a portion of the outstanding receivable it owed to the Company. Finally, after Refco closed its books for the relevant fiscal year, the "loans" would be unwound, with the funds from the first component of the "loan" being returned through BAWAG from RGHI to Refco Capital, and the funds from the second component of the "loan" being repaid to BAWAG, along with a nominal interest rate.

522. As described below, these multi-hundred million dollar "loans" were total shams designed for the purpose of concealing RGHI's mammoth obligations to the Company. For instance, the transactions were not memorialized with formal loan agreements or promissory notes, but instead were documented on an informal "wink and nod" basis through various e-mails, letters and, on information and belief, telephone calls between executives at BAWAG and Defendants Bennett, Maggio, Trosten and others at Refco. Further, as described below, the majority of these so-called "loans" simply involved shuttling money, through BAWAG, from Refco Capital to RGHI, and therefore were extended on a net interest free basis.

i. The February 2000 Transaction

523. Shortly before the close of the Company's fiscal year 2000, Defendants Bennett, BAWAG, RGHI and others participated in a series of transactions designed to remove at least part of the RGHI receivable from the Company's books and temporarily convert a substantial

part of it into a receivable from BAWAG.

524. The Counterclaim and financial records filed in connection with the Refco bankruptcy proceeding demonstrate that, on or about February 24, 2000, Refco Capital transferred approximately $225 million to BAWAG. On the same day, BAWAG made two separate transfers to RGHI, one in the amount of $225 million and another in the amount of $75 million. These transfers are reflected in wire transfer instructions filed in Refco's bankruptcy proceedings. RGHI used the $300 million in proceeds to temporarily reduce a portion of the outstanding receivable it owed to the Company.

525. On information and belief, Bennett, RGHI, BAWAG and others agreed in advance that these transfers would be unwound approximately seven days later, on March 2, 2000. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year ending February 28, 2000, where they served to conceal part of RGHI's obligations to Refco.

526. In addition, the parties agreed that the $225 million transfer from Refco Capital to BAWAG and the subsequent $225 million transfer from BAWAG to RGHI would bear the exact same interest rate, such that BAWAG would not earn any net interest on its $225 million "loan" to RGHI. On information and belief, the parties agreed that the second component of the transaction, the $75 million "loan," would bear a nominal interest rate.

527. The "unwinding" of these transactions is reflected in a RGHI "Monthly Account Statement" that shows (1) a wire transfer from RGHI to "1ST UNION INTL BK/BAWAG," dated March 2, 2000, in the amount of $75 million, and (2) a wire transfer described as "WT TO RE-ALLOCATE FUNDS," also dated March 2, 2000, in the amount of $225 million. The Monthly Account statement also reflects the interest payment to BAWAG on the $75 million

dollar portion of the transaction. Specifically, the Monthly Account statement shows a $93,333.73 million payment on March 8, 2000, which is described as "WT TO 1ST UNION/BAWAG INT. ON 75MM."

ii. The February 2001 Transaction

528. This series of sham transactions was repeated at the close of the Company's fiscal year 2001. Again, the Counterclaim and financial records filed in connection with the Refco bankruptcy proceeding demonstrate that, on or about February 26, 2001, Refco Capital transferred approximately $225 million to BAWAG. On the same day, BAWAG made two separate transfers to RGHI, one in the amount of $225 million and another in the amount of $75 million. These transfers are reflected in wire transfer instructions filed in Refco's bankruptcy proceedings. RGHI used the $300 million to temporarily reduce a portion of the outstanding receivable it owed to the Company.

529. On information and belief, Bennett, RGHI, BAWAG and others agreed in advance that these transfers would be unwound approximately seven days later, on March 5, 2001. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year end of February 28, 2001, where they served to conceal part of RGHI's obligations to Refco.

530. In addition, the parties agreed that the $225 million transfer from Refco Capital to BAWAG and the subsequent $225 million transfer from BAWAG to RGHI would bear the exact same interest rate, such that BAWAG would not earn any net interest on its $225 million "loan" to RGHI. On information and belief, the parties agreed that the second component of the transaction, the $75 million "loan," would bear a nominal interest rate.

531. The "unwinding" of these transactions is reflected in a RGHI "Customer Ledger Report" that shows (1) a wire transfer from RGHI to "1ST UNION INTL BK/BAWAG," dated

March 5, 2001 in the amount of $75 million, and (2) a $225 million wire transfer described as "XFER FOR CREDIT RGF," also dated March 5, 2001.

iii. The February 2002 Transaction

532. This series of sham transactions was repeated at the close of the Company's fiscal year 2002. The Counterclaim and financial records filed in connection with the Refco bankruptcy proceeding demonstrate that, on or about February 25, 2002, Refco Capital transferred approximately $210 million to BAWAG. On the same day, BAWAG made a single transfer to RGHI in the total amount of $300 million, consisting of the $210 million "loan" received from RGHI and an additional $90 million "loan" from BAWAG to RGHI. These transfers are reflected in, among other things, e-mails filed in the Refco bankruptcy proceedings. For instance, at 11:04 a.m. on February 21, 2002, Defendant Maggio sent an e-mail to Thomas Hackl, who was then a Managing Director and head of Treasury at BAWAG (and who joined Refco three months later), stating:

> Good Morning Thomas:
>
> This e-mail is to confirm the wire instruction for the following:
>
> 1. BAWAG will wire 300 million (USD) for value 2/25/02:
>
> * * *
>
> 2. REFCO will wire 210 million (USD) for value 2/25/02:
>
> * * *
>
> If you have any questions, please contact me at (212) 693-7077.
>
> Regards,
>
> Sandy

533. RGHI used the $300 million to temporarily reduce a portion of the outstanding receivable it owed to the Company.

534. Bennett, Maggio, RGHI, BAWAG and others agreed that these transfers would be unwound approximately seven days later, on March 4, 2002. At 12:23 p.m. on March 1, 2002, Defendant Maggio sent an e-mail to executives at BAWAG, stating:

> Good Morning:
>
> This e-mail is to confirm the following wire instruction
>
> 1. BAWAG will wire to Refco USD 210,075.133,33 value 04.03.2002
>
> * * *
>
> 2. REFCO will wire to BAWAG USD 210,075.133,33 value 04.03.2002
>
> * * *
>
> 3. REFCO will wire to BAWAG USD 90,040.950, value 04.03.2002
>
> * * *
>
> If you have any questions, please contact me at (212) 693-7077.
>
> Regards,
>
> Sandy

535. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year end of February 28, 2002, where they served to conceal part of RGHI's obligations to Refco.

536. The "unwinding" of these transactions is reflected in a RGHI "Customer Ledger Report" that shows (1) a wire transfer from RGHI to "1ST UNION-BAWAG," dated March 4, 2002 in the amount of approximately $90 million, and (2) an approximate $210 million wire transfer described as "WT TO 1ST UNION-BAWAG," also dated March 4, 2002.

iv. The February 2003 Transaction

537. This series of sham transactions was repeated at the close of the Company's fiscal year 2003. The Counterclaim and financial records filed in connection with the Refco

bankruptcy proceeding demonstrate that, on or about February 25, 2003, Refco Capital transferred approximately $175 million to BAWAG. On the same day, BAWAG made two separate transfers to RGHI, one in the amount of $175 million and another in the amount of $75 million. These transfers are reflected in wire transfer instructions and other documents filed in Refco's bankruptcy proceedings. RGHI used the $250 million to temporarily reduce a portion of the outstanding receivable it owed to the Company.

538. Bennett, Trosten, RGHI, BAWAG and others agreed that these transfers would be unwound approximately seven days later, on March 4, 2003. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year end of February 28, 2003, where they served to conceal part of RGHI's obligations to Refco.

539. In addition, the parties agreed that the $175 million transfer from Refco Capital to BAWAG and the subsequent $175 million transfer from BAWAG to RGHI would bear the exact same interest rate, such that <u>BAWAG would not earn any net interest on its $175 million "loan" to RGHI.</u> At 9:37 a.m. on March 3, 2003, executives at BAWAG sent an e-mail to Defendant Trosten (later forwarded to Defendant Maggio), stating "USD 175.00.00: <u>flat – no payments</u>." (Emphasis added.) These documents also reflect that the parties agreed that the second component of the "loan," the $75 million transfer, would bear a nominal interest rate.

540. The "unwinding" of these transactions is reflected in a RGHI "Customer Ledger Report" that shows (1) a $75 million wire transfer to BAWAG from RGHI, dated March 4, 2003, and described as "WT TO BAWAG," and (2) a $175 million wire transfer described simply as "TRANSFER," also dated March 4, 2003. On information and belief, this Monthly Account Statement also shows the interest payment on the $75 million component of the "loan," in the form of a $26,486.98 payment dated March 4, 2003 and described as "WT TO BAWAG."

v. The February 2004 Transaction

541. This series of sham transactions was repeated at the close of the Company's fiscal year 2004. Again, the Counterclaim and financial records filed in connection with the Refco bankruptcy proceeding demonstrate that, on or about February 25, 2004, Refco Capital transferred approximately $210 million to BAWAG. On the same day, BAWAG made two separate transfers to RGHI, one in the amount of $210 million and another in the amount of $40 million. These transfers are reflected in wire transfer instructions and other documents filed in Refco's bankruptcy proceedings. RGHI used the $250 million to temporarily reduce a portion of the outstanding receivable it owed to the Company.

542. Bennett, Trosten, RGHI, BAWAG and others agreed in advance that these transfers would be unwound approximately seven days later, on March 4, 2004. At 6:06 a.m. on February 24, 2004, Monika Weinhengst, a BAWAG executive, sent an e-mail to Defendant Trosten, copying two other BAWAG executives, that stated:

> good morning Rob,
>
> I refer to the following trades dealt 23.02.2004
>
> 1. we take from Refco Capital Bermuda USD 210,000.000,
>
> * * *
>
> 2. we place on deposit with Refco Group Holding USD 40,000.000
>
> * * *
>
> 3. we place on deposit with Refco Group Holding USD 210,000.000,
>
> * * *
>
> for Repayment value 04.03.2004 . . . .

543. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year end of February 29, 2004, where they served to conceal part of

RGHI's obligations to Refco.

544. This e-mail further demonstrates that the parties agreed that the $210 million transfer from Refco Capital to BAWAG and the subsequent $210 million transfer from BAWAG to RGHI would bear the exact same interest rate – 1.08% – such that BAWAG would not earn any net interest on its $210 million "loan" to RGHI. In addition, this e-mail reflects that the parties agreed that the second component of the "loan," the $40 million transfer, would bear a nominal interest rate of 1.58%.

545. The "unwinding" of these transactions is reflected in a RGHI "Customer Ledger Report" that shows (1) a $40,014,044.44 wire transfer to BAWAG from RGHI, dated March 4, 2004, and described as "WT TO BAWAG," and (2) a $210 million wire transfer described simply as "TRANSFER," also dated March 4, 2004. On information and belief, the additional $14,044.44 reflected in this document comprises the interest payment from Refco to BAWAG on the $40 million component of the transaction.

vi. The February 2005 Transaction

546. This series of sham transactions was repeated at the close of the Company's fiscal year 2005. The Counterclaim and financial records filed in connection with the Refco bankruptcy proceeding demonstrate that, on or about February 23, 2005, Refco Capital transferred approximately $175 million to BAWAG. On the same day, BAWAG made two separate transfers to RGHI, one in the amount of $175 million and another in the amount of $75 million. These transfers are reflected in wire transfer instructions and other documents filed in Refco's bankruptcy proceedings. RGHI used the $250 million to temporarily reduce a portion of the outstanding receivable it owed to the Company.

547. The nature and structure of these transactions is set forth in a February 14, 2005 letter sent from Defendant Bennett to Selcuk Sari of BAWAG. Among other things, the letter

stated:

> Dear Mr. Sari:
>
> I am pleased you had a nice holiday . . . I am glad to have confirmed the arrangements for later this month. As we discussed, the proposed transaction will be executed for value Wednesday, February 23, with an expiration Tuesday, March 8. Confirming the mechanical arrangements these will be as follows:
> 1. A sum of U.S. $250 million is to be placed on deposit with Refco Group Holdings, Inc. and wired for value Wednesday, February 23, 2005 . . .
>
> * * *
>
> 2. The sum of US$175 million is to be placed on deposit with BAWAG by Refco Capital Markets and wired for value February 23, 2005 . . .
>
> * * *
>
> 3. the sum of US$250 million will be repaid for value Tuesday, March 8, 2005 . . . . We understand that ***the rate to be paid to Refco Capital Markets will be the same as the rate charged on the deposits placed with Refco Group Holdings, Inc. with a separate rate to be paid by Refco Group Holdings Inc. on the difference of $75 million.***
>
> (Emphasis added.)

548. Thus, Bennett, RGHI, BAWAG and others agreed in advance that these transfers would be unwound approximately two weeks later, on March 8, 2003, and that BAWAG would not earn any net interest on its $175 million "loan" to RGHI. Thus, the transfers were in effect for approximately a one week period bracketing the Company's fiscal year end of February 28, 2005, where they served to conceal part of RGHI's obligations to Refco. The "unwinding" of these transactions is reflected in documents filed in the Refco bankruptcy proceedings.

3. The Fraudulent Transactions With CIM Ventures

549. Another customer that was involved in at least two round-trip loan transactions with Refco was CIM Ventures. CIM Ventures was a subsidiary of Ingram, an information-technology distributor based in Santa Ana, California. According to the Examiner's Report,

Ingram had a pre-existing account with Refco Capital by virtue of a 1999 transaction – in which Collins and Mayer Brown represented Refco – whereby Refco provided financing to Ingram's overseas subsidiaries.

i. The February 2000 Transaction

550. On February 1, 2000, Refco's then-Chief Administrative Officer, David Weaver, contacted Ingram to discuss a "back-to-back loan" involving Ingram and/or CIM Ventures. Weaver also discussed the transaction with Collins on that date, and Collins' handwritten notes make it clear that he understood the nature, structure and timing of the proposed loans. Those notes state that the principal amount of the loans would be $150 million, that there would be a "15 basis point spread/fee" paid to CIM Ventures, and the loans would be of "one month" duration and would bracket the end of Refco's fiscal year end, "Feb 15 – March 15." Collins' notes also make clear that he was aware that CIM Ventures was simply a conduit that would funnel the proceeds of the loans directly from Refco Capital to RGHI, stating "Refco Capital Markets → CIM" and "CIM – Refco Group Holdings."

551. During the next several weeks, Mayer Brown prepared documentation for two loans in the amount of $150 million: one from Refco Capital to CIM Ventures, and one from CIM Ventures to RGHI. These documents included the specific loan documents as well as a guarantee by Refco of RGHI's obligation to repay CIM Ventures, and an indemnification agreement whereby Refco agreed to indemnify CIM Ventures against any loss or liability arising out of the transactions. A 15 basis point spread was to be paid to CIM Ventures. The loan agreement between CIM Ventures and Refco Capital made specific reference to the related loan agreement between CIM Ventures and RGHI, and vice versa.

552. In a February 22, 2000 letter to Monk of Mayer Brown, James F. Ricketts ("Ricketts"), an officer of Ingram and CIM Ventures, described the nature of the transaction as

follows:

> It is planned that RCM [Refco Capital] will deposit the loan proceeds in CIM's account (No. 6800-10101) at RCM on February 25, 2000. CIM will then fax a letter to RCM instructing them to move the funds to RGHI with a 15 basis point uplift in the interest rate. RCM then will withdraw the funds from CIM's account and deposit them in RGHI's account, thereby completing the back-to-back loan transaction. The steps will be reversed on March 9, 2000. ***RCM will then transfer the CIM spread on the transaction to its [CIM's] Royal Bank of Canada account in the Cayman Islands.***

(Emphasis added.) Thus, by February 2000, it is clear that Collins, Monk and Mayer Brown knew the nature of the round trip loan transaction and also understood that Refco Capital would be paying the interest "spread" on the loans to CIM Ventures.

553. The parties executed the loan agreements on or about February 25, 2000, and Refco Group executed a guaranty of CIM Ventures' loan to RGHI. The $150,000,000 in proceeds that originated with Refco Capital was used to pay down a portion of the receivable owed from RGHI to the Company. On or about March 9, 2000, after the close of Refco's fiscal year, the loans were unwound, the net profit was transferred to CIM Ventures' bank account, and the $250 million debt was once again shown on the Company's books as being owed by RGHI to the Company.

554. A March 10, 2000 letter from Monk to Ricketts, and copying Collins, further confirms Mayer Brown's involvement in this transaction, providing:

> I am enclosing for your files executed originals of the following documents:
>
> > 1. Loan Agreement between Refco Capital Markets, Ltd., as lender and CIM Ventures Inc. as Borrower
> >
> > 2. Loan Agreement between CIM Ventures Inc. as lender and Refco Group Holdings, Inc. as borrower
> >
> > 3. Indemnification letter from Refco Group Holdings, Inc.

4. Guarantee of Refco Group Ltd., LLC

> In addition, I enclose the original promissory note of CIM Ventures Inc. to Refco Capital Markets, Ltd., endorsed as paid in full.

The documents enclosed with the letter include a promissory note between CIM Ventures and Refco Capital that was marked "paid in full" and signed on behalf of Refco Capital by Mayer Brown attorney Monk as Refco Capital's "authorized agent."

ii. The February 2001 Transaction

555. On or about February 23, 2001, Refco Capital loaned CIM Ventures the sum of $250,000,000. On the same day, CIM Ventures loaned $250,000,000 to RGHI. The repayment date for both loans was two weeks later, March 6, 2001. Mayer Brown prepared the documentation for these loans. The loan agreement between CIM Ventures and Refco Capital made specific reference to the related loan agreement between CIM Ventures and RGHI, and vice versa.

556. A letter dated February 16, 2001 from Ingram to Collins described these "back-to-back loan transactions" as follows:

> It is planned that RCM [Refco Capital] will deposit the loan proceeds in CIM's account (No. 6800-10101) at RCM on February 23, 2001. CIM will then fax a letter to RCM instructing them to move the funds to RGHI with a 15 basis point uplift in the interest rate. RCM then will withdraw the funds from CIM's account and deposit them in RGHI's account, thereby completing the back-to-back loan transaction. The steps will be reversed on March 6, 2001. RCM will transfer the CIM spread on the transaction to CIM's Royal Bank of Canada account (Acct. No. 2003895) in the Cayman Islands. The account details are the same as used for the back-to-back loan done in 2000.

557. The $250,000,000 in proceeds that originated with Refco Capital was used to pay down a portion of the receivable owed from RGHI to the Company, and the loans were unwound on or about March 6, 2001, such that the $250 million debt was once again shown on the

Company's books as being owed by RGHI to the Company. When the loans were unwound, the promissory note, marked "Paid in full," was sent to CIM Ventures with a copy to Collins.

558. [redacted]

iii. The Aborted February 2002 Transaction

559. Collins and Mayer Brown were also directly involved in a contemplated—but never executed—round trip loan transaction between Refco and Ingram in February 2002.

560. In January 2002, Ricketts agreed to participate in a $250 million loan transaction with Refco Capital and RGHI substantially similar to the transactions the two entities had engaged in during prior years. Ricketts made some minor mark-ups to the loan documents and sent them to Collins at Mayer Brown.

561. The increasing awareness of securities fraud in the wake of the highly-publicized Enron scandal, however, apparently caused Ingram's CFO to have second thoughts about proceeding with the transaction. The CFO notified Ricketts that Ingram should not do the transaction, stating in a January 30, 2002 email that:

> [I] wouldn't take the chance at this point. . . . [G]iven the environment and amounts involved, [I] just wouldn't take the risk or go to the trouble . . . ***[I'd] think [Refco] should really be reviewing this area anyways.***

(Emphasis added.)

562. On January 30, 2002, Ricketts sent an email to executives at Refco stating that Ingram would not be involved in the transaction but, in apparent recognition of the significant role that Mayer Brown had played in connection with the contemplated transaction, Ingram offered to pay Mayer Brown's legal expenses. The January 30, 2002 email was titled "CIM Back-To-Back Loan," and stated in relevant part:

> [T]he Enron debacle is putting pressure on the SEC to increase the level of financial disclosure by large companies like IM . . . I spoke with Tom Madden, our worldwide CFO, in Europe and briefed him again on the details of our planned late-February transaction, and we jointly concluded that we should put a hold on the transaction. . . . [W]e would not be taking this step unless we felt strongly that the disclosure risks were too high . . . ***Please be assured that CIM will reimburse Refco for reasonable legal expenses with Mayer Brown in preparing the documents for the back-to-back loan. Send the invoices to me and I will get them paid promptly.***

(Emphasis added.)

4. The Fraudulent Transactions With EMF and Delta Flyer

563. At the end of each of Refco's fiscal years ended February 2000, 2001, 2002 and 2003, the Company engaged in round-trip loan transactions with two affiliates of EMF Financial, LLC: EMF and Delta Flyer.

i. The February 2000 Transaction

564. On February 25, 2000, Refco engaged in a round-trip loan transaction with EMF. On that date, Refco Capital loaned $50,000,000 to EMF, and EMF loaned $50,000,000 to RGHI. The $50,000,000 in proceeds that originated with Refco Capital was used to pay down a portion of the receivable owed from RGHI to the Company, and the loans were unwound on or about March 3, 2000, such that the $50 million debt was once again shown on the Company's books as being owed by RGHI to the Company. Mayer Brown attorney Monk drafted the documents for the sham transactions and sent the executed documents to EMF. Additionally, once the

transactions were unwounded, a "Paid in full" notation was added to the promissory note for EMF's loan from Refco Capital, and Monk signed that notation on behalf of Refco Capital as its "authorized agent."

ii. The February 2001 Transaction

565. Through loan agreements dated February 26, 2001, which were prepared by Mayer Brown and were substantially identical to the loan agreements used in connection with the other round trip loan transactions discussed herein, Refco Capital loaned $200,000,000 to Delta Flyer and Delta Flyer loaned $200,000,000 to RGHI. The loan agreement between Delta Flyer and Refco Capital made specific reference to the related loan agreement between Delta Flyer and RGHI, and vice versa.

566. The $200,000,000 in proceeds that originated with Refco Capital was used to pay down a portion of the receivable owed from RGHI to the Company, and the loans were unwound on or about March 2, 2001, such that the $200 million debt was once again shown on the Company's books as being owed by RGHI to the Company. Delta Flyer was compensated for its role in the transactions with a 100 basis point "spread."

567. Collins himself reviewed and edited the documentation for these loans and was involved in negotiating their terms. For instance, a draft Loan Agreement dated February 26, 2001, which was substantially identical to the loan agreements used in connection with the other round trip loan transactions discussed herein, contains Collins' handwritten "mark-up" making numerous changes that identify the counterparty as Delta Flyer. Similar changes are made in Collins' handwriting to a guaranty in favor of Delta Flyer from Refco.

568. According to the Examiner's report, the CFO at Delta Flyer stated that Delta Flyer opened an account at Refco Capital shortly before these transactions were executed, and the account was used solely to facilitate the transactions (rather than for any legitimate business

purpose). Further, the CFO acknowledged that Delta Flyer did not have sufficient funds to cover the loan it agreed to make to RGHI, and that the loan was funded solely by the amounts wired to Delta Flyer's Refco account by Refco Capital. The CFO also stated that—consistent with the other round trip loans described herein—he understood that no funds would actually be exchanged in connection with the transactions other than the net interest profit to Delta Flyer.

iii. The February 2002 Transaction

569. Delta Flyer engaged in a $175 million round trip loan with Refco between February 25, 2002 and March 4, 2002. The structure and terms of this transaction were the same as the prior year's transaction except that the agreements provided for specified interest rates rather than LIBOR-based rates. However, Delta Flyer still received a 100 basis point "spread" as in the prior year. Refco Group provided a guaranty of Delta Flyer's loan to RGHI, and further agreed to indemnify Delta Flyer against third party claims arising out of these round trip loans. Mayer Brown prepared all of the documentation for these loans, and transmitted those documents to Refco by way of a February 13, 2002 memorandum from Collins and Koury to David Weaver. Mayer Brown also sent the final executed transaction documents to Delta Flyer. The loan agreement between Delta Flyer and Refco Capital made specific reference to the related loan agreement between Delta Flyer and RGHI, and vice versa.

iv. The February 2003 Transaction

570. Between February 21, 2003 and March 4, 2003, Refco engaged in a $150 million round-trip loan transaction with Delta Flyer. Mayer Brown attorney Koury again drafted the documents for this loan, and the transaction documents were virtually identical to the previous year's loan, except that Maggio signed on behalf of Refco Capital and the loans had different interest rates. Delta Flyer received a 75 basis point "spread" on the loans. The loan agreement between Delta Flyer and Refco Capital made specific reference to the related loan agreement

between Delta Flyer and RGHI, and vice versa. Bennett signed the promissory note, guaranty and indemnification agreement on behalf of Refco Group, and Maggio signed the loan documents on behalf of Refco Capital.

5. The Fraudulent Transaction With Beckenham

571. Between February 25, 2002 and March 4, 2002, Refco Capital and RGHI engaged in $125 million round-trip loan transactions with Beckenham, a hedge fund specializing in futures and foreign currency trading. The transaction documents were similar to those for the other transactions, and provided for Beckenham to pay interest to Refco Capital at a rate of 1.8375% and receive interest from RGHI at a rate of 2.8375%, thus earning a 100 basis point "spread." Refco Group executed a guaranty of Beckenham's loan to RGHI, and further agreed to indemnify Beckenham against third party claims arising out of these round trip loans. Mayer Brown prepared all of the documentation for these loans, and transmitted drafts of those documents to Refco by way of a February 13, 2002 memorandum from Collins and Koury to David Weaver. The loan agreement between Beckenham and Refco Capital made specific reference to the loan agreement between Beckenham and RGHI, and vice versa.

6. The Fraudulent Transaction With CS Land

572. At the end of Refco's fiscal year 2000, Refco Capital and RGHI engaged in $110 million round-trip loan transactions with CS Land. These transactions were structured substantially identically to the February 2000 transaction with CIM Ventures, with the loans being initiated on February 25, 2000 and unwound on March 3, 2000. CS Land received a 15 basis point "spread" on the transactions. According to the Examiner's Report, on February 23, 2000, when representatives of CS Land raised a question regarding the enforceability of the loan agreements, Maggio contacted Collins to discuss the issue. Mayer Brown attorney Monk drafted all of the transaction documents for the $110 million round trip "loan" involving CS Land.

D. Summary and Form of Transactions

573. The chart below sets forth a summary of the transactions described above:

"Loan" Date	Financial Period End	Repayment Date	Total Amount of "Loans
February 24, 2000[(B)] February 25, 2000[(CS)] February 25, 2000[(EMF)] February 25, 2000[(CIM)]	February 29, 2000	March 2, 2000 ($300 Million) March 3, 2000 ($110 Million) March 3, 2000 ($50 Million) March 9, 2000 ($150 Million)	$610 Million
February 23, 2001[(CIM)] February 26, 2001[(B)] February 26, 2001[(DF)]	February 28, 2001	March 6, 2001 ($250 Million) March 5, 2001 ($300 Million) March 2, 2001 ($200 Million)	$750 Million
February 25, 2002[(X)] February 25, 2002[(B)] February 25, 2002[(DF)] February 25, 2002[(BH)]	February 28, 2002	March 4, 2002 ($325 Million) March 4, 2002 ($300 Million) March 4, 2002 ($175 Million) March 4, 2002 ($125 Million)	$925 Million
February 21, 2003[(X)] February 25, 2003[(B)] February 25, 2003[(DF)]	February 28, 2003	March 4, 2003 ($500 Million) March 4, 2003 ($250 Million) March 4, 2003 ($150 Million	$900 Million
February 20, 2004[(X)] February 25, 2004[(B)]	February 29, 2004	March 4, 2004 ($720 Million) March 4, 2004 ($250 Million)	$970 Million
May 27, 2004[(X)]	May 31, 2004	June 7, 2004 ($700 Million)	$700 Million
August 25, 2004[(X)]	August 30, 2004	Sept. 7, 2004 ($485 Million)	$485 Million
November 26, 2004[(X)]	November 30, 2004	Dec. 3, 2004 ($545 Million)	$545 Million
December 30, 2004[(X)]	End of Calendar 2004	January 4, 2005 ($550 Million)	$550 Million
February 23, 2005[(X)] February 23, 2005[(B)]	February 28, 2005	March 8, 2005 ($345 Million) March 8, 2005 ($250 Million)	$595 Million
May 25, 2005[(X)]	May 31, 2005	June 6, 2005 ($450 Million)	$450 Million

"Loan" Date	Financial Period End	Repayment Date	Total Amount of "Loans
August 26, 2005[(X)]	August 30, 2005	Sept. 6, 2005 ($420 Million)	$420 Million

[(X)] Denotes transaction involving Customer X
[(CIM)] Denotes transaction involving CIM Ventures
[(B)] Denotes transaction involving BAWAG
[(CS)] Denotes transaction involving CS Land
[(EMF)] Denotes transaction involving EMF
[(DF)] Denotes transaction involving Delta Flyer
[(BH)] Denotes transaction involving Beckenham

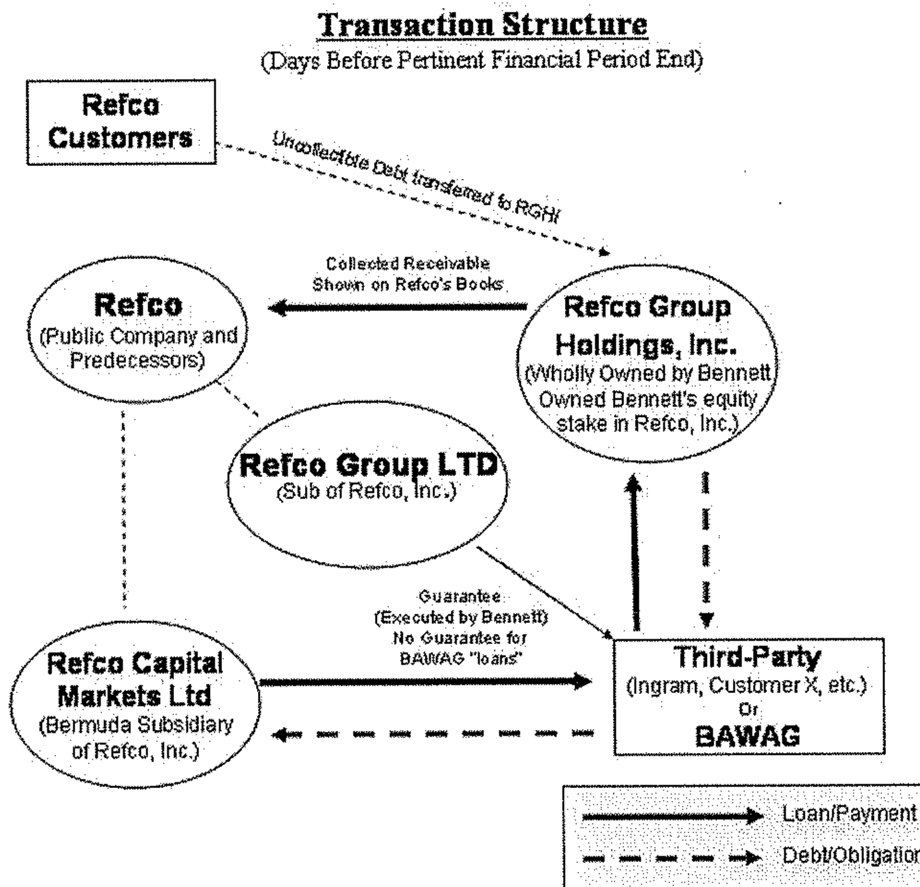
574. With the exception of the transactions involving BAWAG, Mayer Brown documented all of the foregoing round-trip transactions and, as observed by the Examiner, these transactions were specifically noted in the monthly billing statements Collins prepared and/or reviewed and sent to Refco.

575. The following chart sets forth the known interest rates on the loans between the third party customers, Refco Capital, and RGHI described above:

Loan Date	Customer & Loan Amount	Interest Rate (Loan from Refco Capital to Customer)	Interest Rate (Loan from Customer to RGHI)	Spread
February 2000	CS Land - $110 Million	LIBOR	LIBOR plus 0.15%	0.15%
	EMF - $50 Million	LIBOR	LIBOR plus 0.15%	0.15%
	CIM Ventures - $150 Million	LIBOR	LIBOR plus 0.15%	0.15%
February 2001	CIM Ventures - $250 Million	LIBOR	LIBOR plus 0.15%	0.15%
	Delta Flyer - $200 Million	LIBOR	LIBOR plus 1.0%	1.0%
February 2002	Customer X - $325 Million	1.8375%	2.8375%	1.0%
	Delta Flyer - $175 Million	1.8375%	2.8375%	1.0%
	Beckenham - $125 Million	1.8375%	2.8375%	1.0%
February 2003	Customer X - $500 Million	1.31%	2.06%	0.75%
	Delta Flyer - $150 Million	1.31%	2.06%	0.75%
February 2004	Customer X - $720 Million	1.06%	1.81%	0.75%
May 2004	Customer X - $700 Million	1.06%	1.81%	0.75%
August 2004	Customer X - $485 Million	1.50%	2.25%	0.75%
November 2004	Customer X - $545 Million	2.00%	2.75%	0.75%

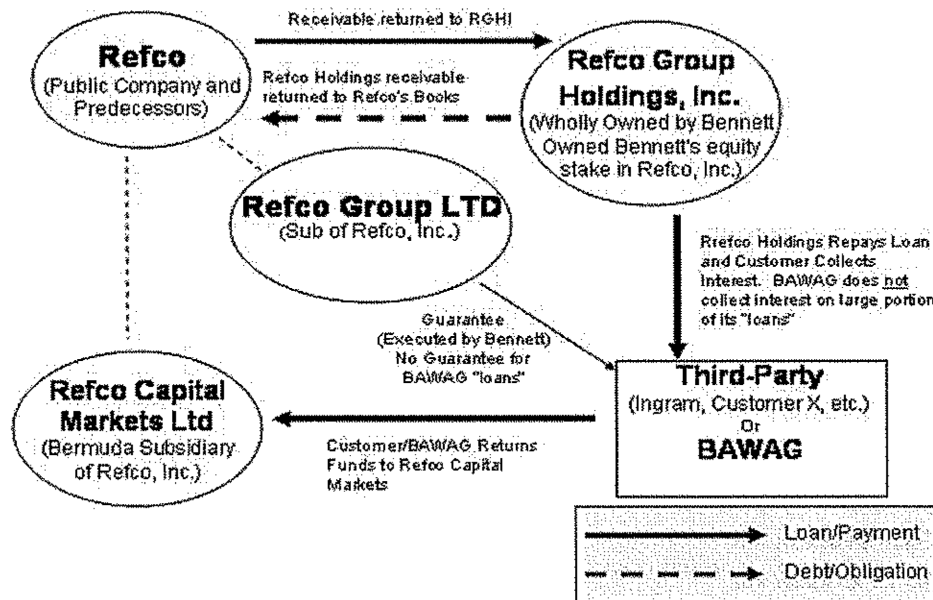
Loan Date	Customer & Loan Amount	Interest Rate (Loan from Refco Capital to Customer)	Interest Rate (Loan from Customer to RGHI)	Spread
December 2004	Customer X - $550 Million	2.25%	3.00%	0.75%
February 2005	Customer X - $345 Million	2.50%	3.25%	0.75%
May 2005	Customer X - $450 Million	--	--	--
August 2005	Customer X - $420 Million	3.50%	4.25%	0.75%

576. Each of the sham transactions described above followed a similar format, and each was designed so that the Company could fraudulently avoid taking hundreds of millions of dollars of write-offs for receivables that could not be collected. The following chart represents the form of the transactions as structured by Refco:



577. As described herein, after the Company closed its books for the pertinent period,

the fraudulent transaction would be "unwound" and the receivable from RGHI would be reinstated on the Company's books, where it would remain until the close of the next financial period. The following chart represents the form that the "unwinding" of the transactions took after each financial period:



E. Material Impact on Financial Statements

578. In addition to undermining the validity of the descriptions of the Company's business model, historical performance, and operational parameters, the financial manipulations above (including those that took place prior to February 2002) rendered the Company's financial results materially false and misleading. These manipulations involved huge related-party transactions between various Refco entities and RGHI, as well as enormous guarantees by Refco Group to third parties and transfers to and from BAWAG. These related-party transactions and

guarantees were required to be disclosed under GAAP and other applicable accounting rules and regulations of the SEC and other regulatory bodies. The result (indeed, the goal) of the fraudulent transactions was to materially overstate the Company's net capital, members' equity and net income while materially understating its reserves for doubtful accounts.

579. The following chart details the impact that the Company's financial manipulations had on the Company's pre-tax income, net income, and members' equity, for fiscal years 2002, 2003, 2004 and 2005 (in millions):

	(In Millions)					
Fiscal	**Pre-Tax Income**		**Net Income**		**Members' Equity**	
Year	**Reported**	**Adjusted**	**Reported**	**Adjusted**	**Reported**	**Adjusted**
2002	$ 116.2	$ (808.8)	$ 93.6	$ (743.5)	$ 515.1	$ (322.1)
2003	154.8	(745.2)	140.1	(674.4)	566.4	(248.1)
2004	189.5	(780.5)	187.2	(690.7)	616.1	(261.8)
2005	150.6	(444.4)	176.3	(362.2)	150.3	(388.2)

580. Of the foregoing amounts, the following financial impacts were the result of financial manipulations involving Collins and Mayer Brown:

	(In Millions)					
Fiscal	**Pre-Tax Income**		**Net Income**		**Members' Equity**	
Year	**Reported**	**Adjusted**	**Reported**	**Adjusted**	**Reported**	**Adjusted**
2002	$ 116.2	$ (508.8)	$ 93.6	$ (472.0)	$ 515.1	$ (50.5)
2003	154.8	(495.2)	140.1	(448.2)	566.4	(21.9)
2004	189.5	(530.5)	187.2	(464.4)	616.1	(35.5)
2005	150.6	(194.4)	176.3	(135.9)	150.3	(161.9)

581. The following chart details the impact that the Company's financial manipulations had on the Company's pre-tax income, net income, and members' equity on a quarterly basis for fiscal year 2005 and the first quarter of fiscal 2006 (ended May 31, 2005):

	(In Millions)					
Quarters	**Pre-Tax Income**		**Net Income**		**Members' Equity**	
2005	**Reported**	**Adjusted**	**Reported**	**Adjusted**	**Reported**	**Adjusted**
Q1	$ 58.4	$(641.6)	$ 59.3	$ (574.2)	$ 671.0	$ 37.5
Q2	49.0	(436.0)	45.2	(393.7)	81.5	(357.4)
Q3	21.3	(523.7)	36.1	(457.1)	126.7	(366.5)
2006						
Q1	43.8	(406.2)	42.6	(364.7)	185.4	(221.9)

582. Mayer Brown was involved in all of the transactions giving rise to the foregoing financial impacts for these quarterly periods.

583. The following chart details the impact that the Company's financial manipulations had on the Company's reserves for net capital, maintained pursuant to CFTC and other regulatory requirements for fiscal years 2004 and 2005 (in millions):

Fiscal	**CFTC Net Capital**	
Year	**Reported**	**Adjusted**
2004	223.6	(654.3)
2005	283.9	(254.6)

584. Of the foregoing amounts, the following financial impacts were the result of financial manipulations involving Collins and Mayer Brown:

Fiscal CFTC Net Capital		
Year	Reported	Adjusted
2004	223.6	(428.0)
2005	283.9	(28.3)

585. The following chart details the impact that the Company's financial manipulations had on the Company's reserves for net capital, maintained pursuant to CFTC and other regulatory requirements on a quarterly basis for the first, second and third quarters of 2005 and the first quarter of 2006 (in millions):

CFTC Net Capital		
Quarter	Reported	Adjusted
Q1 2005	242.7	(390.8)
Q2 2005	282.0	(156.9)
Q3 2005	301.7	(191.5)
Q1 2006	354.5	(52.8)

586. Mayer Brown was involved in all of the transactions giving rise to the foregoing financial impacts for these quarterly periods.

587. For each period reflected in the preceding charts, the adjusted pre-tax and net income figures are based on the assumption that the uncollectible receivables were first discovered and corrected in that period, and the adjusted net capital figures are based on the assumption that the uncollectible receivables were included as assets when calculating the Company's reported net capital figures.

XII. FALSE AND MISLEADING STATEMENTS

588. In connection with the Bond Offering, the Company and its representatives (including the Officer Defendants, the Audit Committee Defendants, Trosten, Mayer Brown, and Collins) as well as the THL Defendants, the Bond Underwriter Defendants, and Grant Thornton, made numerous false and misleading statements of material fact and omitted to disclose material facts in the Bond Offering Memorandum and/or at the Bond Road Show. These false and misleading statements and omissions are detailed above at ¶¶ 118-155 and 159-162, which allegations are incorporated herein by reference.

589. Following the Bond Offering in August 2004, the Company's securities began to trade publicly and the Company became subject to the filing requirements of the Exchange Act. From that point forward, in regular press releases and in periodic filings with the SEC, the Company and the Defendants made numerous materially false and misleading statements, including the untrue statements in the Bond Registration Statement and the IPO Registration Statement as discussed above, as well as statements by the Company and its officers and directors in press releases and in SEC filings on Form 8-K, Form 10-Q, and Form 10-K, as discussed below.

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

590. On May 27, 2005, the Company announced the results of its operations for the year and quarter ended February 28, 2005 and filed a Form 8-K (the "May 2005 8-K"), which was signed by Bennett. A press release dated May 27, 2005 (the "May 2005 Press Release"), which included the Company's consolidated financial statements for the year and quarter ended February 28, 2005, was attached as an exhibit to the May 2005 8-K.

591. The May 2005 Press Release contained numerous false statements of material fact about the Company's financial results and performance, including the following statement by Bennett:

> Refco Group Ltd., LLC's fourth quarter performance concluded a transforming and successful year for Refco, which reported strong performance in its key operating businesses. Refco's transaction volume growth in derivative brokerage, foreign exchange and fixed income equaled or exceeded the strong secular and cyclical growth trends enjoyed by these global markets and drove revenues to record levels. This is indicative of the key attributes of the Company's business model, its financial performance and cash flows . . . . In summary, fiscal 2005's performance maintained excellent growth in net revenue, net income and cash flow of our business segments.

592. The May 2005 Press Release stated that the Company's:

(a) "net income for the fourth quarter decreased by 23.6% to $35.7 million from $46.8 million for the same quarter a year ago"; and

(b) "net income for the year ended February 28, 2005 decreased by 5.8% to $176.3 million from $187.2 million compared with the year ended February 29, 2004."

593. The May 2005 Press Release also stated that (a) the Company had established $61.190 million and $65.2 million in reserves for doubtful accounts (for the periods ending February 28, 2005 and February 29, 2004, respectively); (b) the Company's "regulated subsidiaries reported excess regulatory capital of $170.4 million;" (c) the Company's total assets were $48.8 billion; and (d) the Company's "members' equity was $152.8 million."

594. These statements were materially false and misleading because they failed to disclose the existence of a material multi-hundred million dollar receivable owed to the Company from an entity controlled by Bennett, and similarly failed to disclose the "round robin" transactions through which Refco funneled through BAWAG and third-parties the huge sums of money that RGHI used to "pay off" some or all of the receivable days before the close of the

period. As discussed above, Refco and the THL Partner Defendants have admitted that this receivable should have been, but was not, disclosed as a related-party transaction on the Company's reported financial statements. Further, the fraudulent scheme set forth above was designed to, and did, manipulate Refco's financial information such that the Company overstated its (i) income; (ii) total assets; (iii) regulatory capital reserves; and (iv) shareholders equity; and materially understated Refco's reserves for doubtful accounts while omitting to disclose the related-party transactions involving, among others, Bennett and Refco.

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

595. On July 1, 2005, Refco Group filed its Annual Report for fiscal year 2005 on Form 10-K (as amended through a Form 10-K/A filing on July 20, 2005) (collectively, the "2005 10-K"). Bennett and Sherer signed the 2005 10-K.

596. The 2005 10-K included the Company's audited consolidated financial statements for fiscal years 2003, 2004 and 2005, which the Company's management had prepared with significant assistance and input from Grant Thornton. The consolidated financial statements were accompanied by two unqualified audit opinion letters signed by Grant Thornton on May 24, 2005, which were included in the 2005 10-K, stating that Grant Thornton had conducted audits in accordance with GAAS and opining that the consolidated financial statements included in the 2005 10-K presented fairly, in all material respects, the financial position of the Company for the relevant dates and time periods "in conformity with accounting principles generally accepted in the United States of America."

597. The Company's audited financial statements included in the 2005 10-K reported, among other things:

(a) net income of $176,287,000, $187,156,000 and $140,119,000 for fiscal years 2005, 2004 and 2003, respectively;

(b) receivables from customers (net of reserves) of $2,081,968,000 and $1,591,385,000 as of February 28, 2005 and February 29, 2004, respectively;

(c) reserves against receivables from customers of $61.2 million and $65.2 million as of February 28, 2005 and February 29, 2004, respectively;

(d) total assets of $48,767,849,000 and $33,332,172,000 as of February 28, 2005 and February 29, 2004, respectively; and

(e) members' equity of $152,750,000 as of February 28, 2005.

598. The notes to the audited financial statements included in the 2005 10-K included the following disclosure regarding related-party transactions:

> [The Company] may loan money to and may borrow money from its affiliates, members, affiliated companies and other related parties. Interest is generally charged at prevailing market rates.

599. The 2005 10-K also included the following statements regarding the Company's allowance for doubtful accounts in respect to receivables from customers:

> **Receivables from Customers–Provisions for Doubtful Accounts**
>
> Our receivables are generally collateralized with marketable securities. ***For some customer receivables that are not fully secured, we establish reserves for doubtful accounts when, in the opinion of management, such reserves are appropriate. We have established reserves of $61.2 million and $65.2 million against receivables from customers as of February 28, 2005 and February 29, 2004, respectively. Our allowance for doubtful accounts is based upon management's continuing review and evaluation of the factors such as collateral value, aging and the financial condition of our customers. The allowance is assessed to reflect best estimate of probable losses that have been incurred as of the balance sheet date.*** Any changes are included in the current period operating results. We pursue collection of these receivables through various means, including legal action and collection agencies, and generally do not charge-off any of these receivables. Although these reserves have been adequate historically, the default of a large customer or prolonged period of weakness in global financial markets could adversely affect the ability of our customers to meet their obligations. We do not

> establish reserves for unidentified losses, which may be inherent in our customer base.

(Emphasis added.)

600. The 2005 10-K contained the following statements, among others, about the Company's compliance with regulatory capital requirements:

> As of February 28, 2005, Refco Securities, LLC had net capital of $82.0 million, which was 24.7% of aggregate debit balance and $75.4 million in excess of required net capital. . . . [A]s of February 28, 2005, Refco, LLC had net capital of $283.9 million, which was $95.0 million in excess of required net capital.

601. The 2005 10-K also included representations from the Company's management, including Defendants Bennett, Murphy, Sherer, Sexton and Maggio, that:

> Our management evaluated, with the participation of our principal executive and principal financial officer, the effectiveness of our disclosure controls and procedures . . . as of December 31, 2004. Based on their evaluation, our principal executive and principal financial officer concluded that our disclosure controls and procedures were effective as of February 28, 2005.

602. Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Exchange Act, Defendants Bennett and Sherer each certified that "the financial statements, and other financial information included in [the 2005 10-K], fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this report." They also certified that the 2005 10-K:

> does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

603. Defendants Bennett and Sherer further certified that they had disclosed to the Company's auditors and its audit committee "[a]ny fraud, whether or not material, that involves

management or other employees who have a significant role in the registrants' internal control over financial reporting."

604. Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Defendants Bennett and Sherer further certified that (1) "the [2005 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended"; and (2) "the information contained in the [2005 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

605. As set forth above, these statements were materially false and misleading at the time they were made because they failed to disclose the existence of a material multi-hundred million dollar receivable owed to the Company from an entity controlled by Bennett, and similarly failed to disclose the "round robin" transactions through which Refco funneled through BAWAG and third-parties the huge sums of money that RGHI used to "pay off" some or all of the receivable days before the close of the period. Specifically, these misstatements materially overstated the Company's (i) income; (ii) total assets; (iii) regulatory capital reserves; and (iv) shareholders equity and materially understated the Company's reserves for doubtful accounts while omitting to disclose the related-party transactions involving, among others, Defendant Bennett and the Company.

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

606. On July 15, 2005, the Company announced its results of operations for the quarter ended May 31, 2005 and filed a Form 8-K (the "July 2005 8-K"), which was signed by Defendant Bennett. A press release dated July 15, 2005 (the "First Quarter 2006 Press Release") containing the Company's consolidated financial statements for the quarter ended May 31, 2005 was attached as an exhibit to the July 2005 8-K.

607. The First Quarter 2006 Press Release contained numerous false statements of material facts about the Company's financial results and performance, including the following statement by Defendant Bennett:

> Refco continues to report solid growth on a sequential basis following its recapitalization in August 2004. The Company's global footprint and core competence in transaction processing has enabled it to capitalize on the continuing growth trends in exchange traded derivatives as well as the significant growth in foreign exchange brokerage volumes . . . In summary, it has been an encouraging start to the year.

608. The First Quarter 2006 Press Release stated that:

(a) "Net income for the first quarter decreased by 28.2% to $42.6 million from $59.3 million for the same quarter a year ago and increased by 19.3% from $35.7 million for the quarter ended February 28, 2005";

(b) Refco held reserves against receivables from customers in the amount of $62,107,000 as of May 31, 2005;

(c) the Company's "regulated subsidiaries reported excess regulatory capital of $170.4 million";

(d) the Company's total assets were $48.8 billion; and

(e) the Company's "members' equity was $152.8 million."

609. On July 15, 2005, the Company filed its quarterly report with the SEC on Form 10-Q (the "First Quarter 2006 10-Q"), which was signed by Defendants Bennett and Sherer and contained the Company's unaudited consolidated financial statements for the quarter ended May 31, 2005. The First Quarter 2006 10-Q reiterated the Company's financial results reported in the First Quarter 2006 Press Release including the statements regarding the Company's (i) income, (ii) total assets, (iii) regulatory capital reserves, (iv) shareholders' equity, and (v) reserves for

doubtful accounts. The First Quarter 2006 10-Q reported that members' equity was $187,927,000.

610. The First Quarter 2006 10-Q contained the following statements, among others, about the Company's compliance with regulatory capital requirements:

> As of May 31, 2005, Refco Securities, LLC had net capital of $62.2 million, which was 11.1% of aggregate debit balances and $49.6 million in excess of required net capital . . . As of May 31, 2005, Refco, LLC had net capital of $354.5 million, which was $167.7 million in excess of required net capital.

611. The First Quarter 2006 10-Q included the following representation:

> Our management evaluated, with the participation of our principal executive and principal financial officer, the effectiveness of our disclosure controls and procedures . . . as of May 31, 2005. Based on their evaluation, our principal executive and principal financial officer concluded that our disclosure controls and procedures were effective as of May 31, 2005.

612. Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Exchange Act, Defendants Bennett and Sherer each certified that "the financial statements, and other financial information included in [the First Quarter 2006 10-Q], fairly present in all material respects the financial condition, results of operations and cash flows of the registrants as of, and for, the periods presented in this report." They also certified that the First Quarter 2006 10-Q:

> does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

613. Defendants Bennett and Sherer further certified that they had disclosed to the Company's auditors and its audit committee "[a]ny fraud, whether or not material, that involves management or other employees who have a significant role in the registrants' internal control over financial reporting."

614. Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Defendants Bennett and Sherer further certified that (1) "the [First Quarter 2006 10-Q] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended"; and (2) "the information contained in the [First Quarter 2006 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company."

615. The statements set forth above were materially false and misleading because they failed to disclose the existence of a material multi-hundred million dollar receivable owed to the Company from an entity controlled by Bennett, failed to disclose the "round robin" transactions through which Refco funneled through BAWAG and third-parties the huge sums of money that RGHI used to "pay off" some or all of the receivable days before the close of the period, and failed to disclose the multi-hundred million dollar guarantees of Refco Group. Specifically, these misstatements materially overstated the Company's (i) income; (ii) total assets; (iii) regulatory capital reserves; and (iv) shareholders' equity and materially understated the Company's reserves for doubtful accounts while omitting to disclose the related-party transactions involving, among others, Defendant Bennett and the Company.

XIII. ADDITIONAL ALLEGATIONS OF SCIENTER

616. The Officer Defendants, Trosten, and the Audit Committee Defendants (collectively, the "Inside Defendants"), the THL Defendants, Mayer Brown, Collins, and Grant Thornton each acted with scienter with respect to the materially false and misleading statements discussed herein, in that they had actual knowledge that the statements were false or misleading, or acted with reckless disregard for the truth or falsity of these statements. These Defendants' intent to deceive and/or reckless disregard for the truth is demonstrated both by circumstantial evidence supporting a strong inference of scienter, as well as by the fact that these Defendants had motive and the opportunity to commit fraud.

A. **Circumstantial Evidence of Scienter**

617. There is substantial circumstantial evidence supporting a strong inference that the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton acted with scienter.

618. Grant Thornton's Violations of GAAS. As discussed above in ¶¶ 262-295, which paragraphs are incorporated herein by reference, Grant Thornton failed to follow GAAS when conducting its audits. Among other things, Grant Thornton considered Refco a "high risk client," was aware of "significant deficiencies" in Refco's internal controls and of the existence of "significant related party transactions" and of the RGHI receivable, yet made no effort to confirm the nature or purpose of Refco's related party transactions or conduct any meaningful audit of Refco's financial statements. Grant Thornton's violations of GAAS were so egregious that they amount to a reckless disregard for the truth of Refco's financial statements and of Grant Thornton's own audit opinions.

619. In fact, Grant Thornton deliberately or recklessly ignored information in its possession that should have alerted it to the fraud. For instance, as discussed in detail below, Grant Thornton was aware of large end-of-period transactions between Refco and certain customers – including Customer X, Delta Flyer, and Beckenham – yet despite red flags that should have led to further inquiry, it recklessly failed to examine the nature or legitimacy of those transactions. Had Grant Thornton made even the most basic of inquiries into these matters, it would have discovered that these were sham loan transactions with no purpose other than to manipulate Refco's financial statements.

620. For example, on April 16, 2003, at Grant Thornton's request in connection with its audit of Refco's fiscal 2003 financial statements, Refco sent requests to Customer X and Delta Flyer for confirmation of certain transactions reflected on their Refco Capital account

statements. The account statements that were attached to the confirmation requests showed a $500 million deposit to Customer X's account and a $150 million deposit to Delta Flyer's account, both in connection with purported "reverse repo" transactions on February 21, 2003. A "reverse repo" is an agreement whereby securities are sold subject to an agreement to repurchase them at a specified future date and price, and such transactions are typically collateralized by the underlying securities. The account statements for Customer X and Delta Flyer reflected that the repurchase date for both transactions was March 4, 2003, and thus these multi-hundred million dollar transactions suspiciously straddled the end of Refco's fiscal year 2002.

621. Although Grant Thornton was plainly aware of the massive, round-dollar values attached to these purported "reverse repos" and the added highly suspicious circumstance that they both occurred on the same days straddling the end of Refco's fiscal year, Grant Thornton did not review the documentation for the transactions or otherwise do anything to confirm that they were what they purported to be, or that they were supported by collateral. Had Grant Thornton made appropriate inquiries, it would have discovered that these deposits were not from "reverse repo" transactions at all, but were the proceeds of the first leg of the round-trip loans that were being used to conceal Refco's uncollectible receivables. Moreover, had Grant Thornton made any effort whatsoever to obtain the documentation underlying either of these deposits (*i.e.*, the loan agreements between Refco Capital and the customers), it would have readily discovered the other side of the round-trip loans because each loan agreement made specific reference to the customer's separate loan agreement with RGHI. The same was true of all the other round-trip loan agreements alleged herein.

622. In 2004, Refco retained Grant Thornton to conduct a re-audit of Refco Group's February 2002 year end consolidated financial statements for inclusion in the Bond Registration

Statement. During the course of that re-audit, Grant Thornton noted significant year-end balances in the Refco Capital accounts of Customer X, Delta Flyer, and Beckenham, respectively. Identifying these as "individually significant confirms," Grant Thornton had Refco Capital send confirmation requests to Customer X, Delta Flyer, and Beckenham, asking them to confirm certain information to Grant Thornton. The confirmation requests stated that Refco Group was "in the process of registering public debt," and that this process required audited financial statements for the year ended February 28, 2002. They further explained that Refco Group's fiscal year 2002 financial statements "had been audited by an accounting firm that ceased operations," that is, Arthur Andersen, and "accordingly, a re-audit of [Refco's] fiscal 2002 consolidated financial statements is necessary." The confirmation requests asked Customer X, Delta Flyer, and Beckenham to send its confirmation directly to Grant Thornton.

623. Attached to each of the September 2004 confirmation requests was a Statement of Account for the customer's account at Refco Capital as of February 28, 2002. The Statements of Account indicated that Customer X, Delta Flyer and Beckenham had year-end account balances of $325 million, $175 million, and $125 million, respectively, which the Statements described as "time deposits." In addition to showing the balance as of February 28, 2002, however, each Statement of Account also showed recent transaction activity in the account. These Statements of Account showed clearly that all three of these customers' account balances were the result of "time deposits" from Refco Capital on February 25, 2002, just three days prior to the end of Refco's fiscal year.

624. "Time deposits" are loans Refco Capital extended to its customers for purposes of trading, secured by the customers' trading positions. Although the Statements of Account showed on their face that these "time deposits" were not collateralized, Grant Thornton did not

inquire into the lack of collateral or the legitimacy of these massive transactions. Had Grant Thornton performed its audits in a non-reckless manner by making some basic inquiries into the purpose and substance of these "time deposits," it would have readily discovered that there was no collateral, that these loans from Refco Capital occurred simultaneously with loans by these same customers to RGHI, and that these customers were merely serving as middlemen for transfers of hundreds of millions of dollars from Refco Capital to RGHI in the days immediately before Refco closed its books. Additionally, had Grant Thornton reviewed the same customers' account statements for the month of March 2002, it would have seen reversals of these "time deposits" on March 4, 2002, just after the close of the fiscal year.

625. During the course of their investigation, Lead Plaintiffs discussed Grant Thornton's September 2004 confirmation request with Customer X's operations manager and with Principal A. According to Customer X's operations manager, on October 5, 2004, after confirming within his office that Customer X did in fact owe $325,000,000 to Refco Capital as of February 28, 2002, he signed the confirmation and sent it, along with the Statement of Account, to Grant Thornton. While the Statement of Account should have alerted Grant Thornton to the fact that Refco Capital's $325 million, $175 million, and $125 million debts to Customer X, Delta Flyer and Beckenham were each created a mere three days before the end of the fiscal year, Grant Thornton did not ask any of these customers for any additional information or documents. Customer X's Principal A has told Lead Counsel that if Grant Thornton had requested any documents relating to the February 25, 2002 transaction, he would have first suggested that Grant Thornton ask Mayer Brown for them but, if Grant Thornton asked Customer X to provide them, Principal A would have done so. Grant Thornton's failure to make further inquiries as to the nature of the transactions that created these "individually significant"

account balances, and why Refco Capital had made three such enormous loans on the same date and so close to the end of the fiscal year, raises a strong inference of scienter.

626. A few months later, during its review of Refco's financial statements for the quarter ended November 30, 2004, Grant Thornton obtained a "Funding Product Accrued Interest Report" that showed not only a purported $545 million "time deposit" to Customer X's Refco Capital account on November 26, 2004, but also – ***on the line right above it*** – a "time deposit" in the same amount and on the same date in RGHI's Refco Capital account. The existence of these two transactions on the same date and for the same amount was a bright red flag and should have led to further inquiry by Grant Thornton, but it did not. Moreover, according to the Examiner, "it does not appear that [Grant Thornton] questioned why Refco entered into a $545 million reverse repo with an affiliated party or scrutinized the circumstances of that transaction" and "it does not appear that [Grant Thornton] questioned why – if RGHI had indeed paid down its debt to Refco as [Grant Thornton] had been told – Refco appeared to be extending additional unsecured loans or advances to RGHI in such massive amounts." Grant Thornton's failure to make such inquiries is particularly egregious because Customer X—as Grant Thornton knew or recklessly failed to discover—was owned by a single individual, had assets of only a few hundred thousand dollars, was not regularly engaged in the business of securities trading, and utterly lacked any ability to repay "loans" of hundreds of millions of dollars.

627. <u>The Size and Unusual Nature of the Sham Loans</u>: The sheer size of the related-party receivable hidden by the transactions described herein and in the following chart raises a strong inference that the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton knew or recklessly disregarded the truth about the transactions.

"Loan" Date	"Loan" Amounts	Reported Net Income (Relevant Financial Period)	Percentage of Net Income
February 2002	$925 Million	$93.6 Million (Year ended February 28, 2002)	988%
February 2003	$900 Million	$140.119 Million (Year ended February 28, 2003)	642%
February 2004	$970 Million	$187.156 Million (Year ended February 29, 2004)	518%
May 2004	$700 Million	$59.270 Million (Quarter ended May 31, 2004)	1,180%
August 2004	$485 Million	$44.20 Million (Quarter ended August31, 2004)	1,097%
November 2004	$545 Million	$17.9 Million (Quarter ended November 30, 2004)	3,045%
December 2004	$550 Million	Not applicable	Not applicable
February 2005	$595 Million	$176.3 Million (Year ended February 28, 2005)	337%
May 2005	$450 Million	$42.587 Million (Quarter ended May 31, 2005)	1,056%
August 2005	$420 Million	(Financial Statements delayed because of 10/10/05 Disclosure of Uncollectible Receivable)	Not applicable

That the sums hidden by these sham transactions dwarfed the Company's net income raises a strong inference that the transactions should not have escaped notice. Indeed, Refco's net proceeds from the IPO were only $254,000,000, yet in the circular transaction that took place

only two weeks later, Refco Capital "loaned" its third-party customer the far larger sum of $420,000,000 as part of Refco's fraudulent scheme. The sheer magnitude of the sums hidden by the sham transactions raises a strong inference of scienter.

628. Not only were the round-trip loan transactions large in comparison to Refco's net income, but – as Grant Thornton knew – they were large in comparison to other loans Refco Capital extended to its customers. For example, Grant Thornton's audit workpapers for the fiscal 2004 and 2005 audits contain lists of Refco Capital's largest "time deposits" into customers' accounts for those years – *i.e.*, loans to customers for purposes of trading – including purported "time deposits" to Customer X's account of $720 million and $345 million for those years, respectively. [REDACTED] The tremendous size of these purported "time deposits" in comparison to others made by Refco Capital was a bright red flag that should have led to further inquiry into the reasons for those deposits – inquiry that would have led directly to the revelation that these were not time deposits for trading purposes, but rather were transfers in connection with sham round-trip loans. Particularly for Grant Thornton, which knew of the huge magnitude of these loans in comparison to other purportedly similar loans, failure to make that inquiry was reckless at best.

629. The Timing and Recurrent Nature of the Transactions. The timing of the circular transactions also raises a strong inference of scienter. As discussed above, at the end of every fiscal year from at least 2000 to 2005, and at the end of each fiscal quarter from at least 2004

until August 2005, Refco Capital would "loan" substantial sums to unrelated middlemen and/or BAWAG, which simultaneously loaned that money to RGHI. RGHI, in turn, would use the sum to temporarily extinguish its outstanding obligation to Refco. At the beginning of the subsequent period, and once the financial reporting benefit of this circular arrangement had been realized, the money would find its way back the way it had come, and Refco Capital would receive "repayment" of its massive "loan" of several weeks prior. These transactions took place for at least five years and each involved substantial sums that were unlikely to go unnoticed. Mayer Brown negotiated and drafted the documentation for seventeen of these sham loan transactions. The Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton all knew when Refco's financial periods ended, and understood the requirement that Refco file financial statements as of the end of those periods. The regularity and suspicious timing of these transactions raises a strong inference that these Defendants knew or recklessly disregarded the truth about these transactions. Moreover, because these transactions were conducted on only an annual basis prior to 2004, a simple review of the Company's quarterly financial statements prior to 2004 would have revealed the significant receivables from RGHI, and would have caused these Defendants to question why those receivables vanished at year-end. Their failure to do so was, at best, reckless.

630. The Unusual Nature of the Transactions. The transactions described above were highly unusual transactions for Refco and, on their face, raise a strong inference of scienter. The first step in each of Refco's circular quarter-end transactions involved Refco Capital "lending"

sums far in excess of its net earnings to an outside customer or to BAWAG. A "loan" transferring sums greater than Refco's net income away from the Company should have drawn substantial scrutiny from the Inside Defendants, the THL Defendants, Mayer Brown, Collins and Grant Thornton.

631. The Guarantees by Refco. Further, the transactions were unusual in that Refco provided guarantees – drafted by Mayer Brown – for RGHI's obligations to Customer X and other third parties. The third parties were therefore subject to no economic risk, yet they received "interest" on the "loans." This is additional evidence that the loans were simply a sham designed to benefit Refco. Moreover, various loan and note documents that Mayer Brown drafted for Refco contained covenants prohibiting Refco from incurring additional indebtedness beyond set limits and, in certain instances, expressly prohibited the Company from entering into any guarantees. For instance, Refco Group was a party to a Note Agreement dated June 29, 2000, which was drafted by Mayer Brown and provided that "the Company will not become or be liable in respect of any Guaranty of Indebtedness of [its subsidiaries] and will not permit any [of its subsidiaries] to become or be liable in respect of any Guaranty of Indebtedness of [Refco Capital]." But for their deliberate intent and/or recklessness, these facts would have alerted the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton to the fraudulent scheme.

632. Refco Capital Paid the Interest Owed by RGHI. The net interest to the third-party customers was paid by Refco Capital, even though this amount was owed by RGHI. Thus, Defendants Bennett, Maggio and others were forcing Refco, through Refco Capital, to pay the interest on a loan extended to a purportedly separate entity owned by Bennett and Grant. The Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton either knew

or recklessly failed to discover that Refco was paying interest on a loan extended to an entirely separate entity, RGHI.

633. No Proceeds Changed Hands. For the majority of the round-trip loan transactions, no funds actually changed hands other than the "interest" paid to the third-party participant. As described above, the third-party customers never actually received the proceeds of the multi-hundred million dollar "loans" purportedly extended to them by Refco Capital. Rather, the proceeds would never leave Refco and would be transferred directly from Refco Capital to RGHI and then the pattern was reversed so that they would be transferred from RGHI back to Refco Capital. That no principal actually changed hands in these "loans" should have alerted the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton to their fraudulent nature.

634. Lack of Business Purpose. The circular transactions also raise a strong inference of scienter because, on their face, they serve no legitimate business purpose. At their core, these transactions involved nothing more than funneling money from Refco through a third-party or BAWAG and RGHI to Refco (and back again), with intermediary steps intended to create the appearance that the funds had a different source. On their face, the transactions were shams with no economic justification. There is no conceivable legitimate reason for Refco to arrange for and guarantee payments for hundreds of millions of dollars of loans (timed to occur at Refco's financial period ends) from third-parties to RGHI, and then have the proceeds of those loans transferred to Refco. The obvious lack of a legitimate business purpose for Refco's circular transactions also raises a strong inference of scienter with respect to the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton.

635. Insider Status and Access to Inside Information. The Inside Defendants, the THL Defendants, and Grant Thornton held positions in or with respect to the Company which gave them access to inside information, thus raising a strong inference that they knew or recklessly disregarded the truth about the transactions discussed above. The Officer Defendants were responsible for the Company's operations and played a critical role in its management. The IPO Registration Statement, for example, highlighted the critical role played by Refco's management in the Company's operations, stating that the Company's "success depends to a significant degree upon the continued contributions of our management team, particularly our President and Chief Executive Officer, Phillip Bennett." Similarly, the IPO Registration Statement makes clear that the Audit Committee Defendants were responsible for "the integrity of [the Company's] financial statements." As Refco's auditor, Grant Thornton was also responsible for the accuracy of Refco's financial statements and had unfettered access to the Company's inside information. The THL Defendants had an obligation to obtain and review inside information of Refco in connection with their due diligence process for the LBO, and following the LBO, these defendants had unfettered access to Refco's books as a result of their direct role in the day-to-day management of the Company. In light of the size, timing, unusual nature, and lack of any business purpose for these transactions discussed above, these Defendants' access to, and obligation to monitor, all the underlying facts and circumstances of these transactions raises a strong inference of scienter with respect to the Inside Defendants, the THL Defendants, and Grant Thornton.

636. The Refco/RGHI Relationship. The close relationship between Refco and RGHI – the related party in which Refco's uncollectible receivables were stashed – was well-known to the Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton, as was

the fact that RGHI was controlled by Bennett. The IPO Registration Statement and the Bond Registration Statement each plainly state that RGHI is wholly owned by Bennett and disclose numerous ties between RGHI and Refco, the Audit Committee Defendants, and the Officer Defendants. These ties include RGHI's massive ownership of Refco stock (larger than the total number of shares issued in the IPO); RGHI's power to appoint several members to Refco's board of directors; and RGHI's direct payment of over $37.5 million to Officer Defendants Murphy, Maggio, Sexton, and Klejna for their interest in a Company-endorsed profit-sharing agreement in connection with the LBO. Additionally, Mayer Brown represented both RGHI and Refco in each of the round-trip transactions, a fact which confirms Mayer Brown's and Collins' knowledge that the entities were related and that the loans between them were not made at arms'-length. The Inside Defendants the THL Defendants, Mayer Brown, Collins, and Grant Thornton were therefore familiar with RGHI and had every reason to know that it was a related party controlled by Refco's President and CEO. The close relationship between Refco and RGHI, and these Defendants' knowledge thereof, also raises a strong inference of scienter.

637. Bennett Involved on Both Sides. By virtue of their involvement in the drafting of the loan transaction documents and their receipt of the executed documents, Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew that Bennett was involved on both sides of most of the transactions, signing the guarantees on behalf of Refco and the loan documents on behalf of RGHI. These facts were also known by Bennett, and were known or recklessly disregarded by the THL Defendants and Grant Thornton, who should have reviewed the documentation for these significant, recurring transactions.

638. RGHI Had No Liquid Assets. The Inside Defendants, the THL Defendants, Mayer Brown, Collins, and Grant Thornton knew that RGHI was not only a related party of Refco, but also that it was simply an off balance-sheet holding company that Bennett and Grant used to "park" their significant personal holdings of Refco stock. These Defendants also knew that RGHI had no liquid assets and no operational functions, thereby making it highly suspicious that RGHI would repeatedly need to "borrow" hundreds of millions of dollars (at each of Refco's financial period ends) for any legitimate purpose. It was particularly suspicious that RGHI would need this money at exactly the same time that Refco was closing its books.

639. Line-Item Records of the Round Trip Transactions. Internal statements of RGHI's accounts at Refco Capital contained line-items reflecting the flow of funds in the circular transactions used to conceal the outstanding receivable. In particular, the account statements clearly show massive inflows of cash to RGHI in the days immediately before Refco's fiscal year end, and massive outflows of like (and often identical) sums of cash several days after the fiscal year end. The fund transfers recorded in these account statements were at all times for material amounts far in excess of Refco's net income for the given year and could, therefore, not have escaped notice. The highly suspicious size and timing of this documented flow of funds should have alerted Grant Thornton to the likelihood of financial manipulation and raises a strong inference of scienter. For example:

(a) Account statements for February and March of 2002 reflect two wire transfers from "1ST Union – BAWAG" to RGHI on February 25, 2002 in the amounts of $90,000,000 and $210,000,000. The same document contains entries for March 4, 2002 showing wire transfers from RGHI back to "1ST Union – BAWAG" in the amounts of $90,040,950 and $210,075,133.33. Significantly, this roughly $300,000,000 round-trip

was for an amount over three times the size of Refco's reported net income of $93,634,000 for the fiscal year ended February 28, 2002.

(b) Account statements for February and March of 2003 reflect two wire transfers from "Wachovia NY INTL" to RGHI on February 25, 2003 in the amounts of $75,000,000 and $175,000,000. Supporting documentation attached to these statements make clear that the funds from "Wachovia NY INTL" are funds from the accounts of "BANK FUER ARBEIT UND WIRTSCHAFT"—*i.e.*, from BAWAG. The same account statements also contain entries for March 4, 2003 showing a wire transfer from RGHI back to "BAWAG" in the amount of $75,000,000. The very next line contains an entry for a transfer of $175,000,000 labeled only "TRANSFER." Upon information and belief, this $175,000,000 was transferred directly to Refco Capital (its original source) rather than routing the funds back to Refco Capital through BAWAG, which was unnecessary now that the financial reporting benefit of the circular loans had been achieved. Significantly, this $250,000,000 round trip was for an amount over $100 million greater than Refco's reported net income of $140 million for the fiscal year ended February 28, 2003.

(c) Account statements for February and March of 2004 reflect two wire transfers from "Wachovia NY INTL" to RGHI on February 25, 2004 in the amounts of $40,000,000 and $210,000,000. Supporting documentation attached to these statements make clear that the funds from "Wachovia NY INTL" are funds from the accounts of "BANK FUER ARBEIT UND WIRTSCHAFT"—*i.e.*, from BAWAG. The same account statements also contain entries for March 4, 2004 showing a wire transfer from RGHI back to "BAWAG" in the amount of $40,014,044.44. The same date contains an

entry for a transfer of $210,000,000 labeled only "TRANSFER." Upon information and belief, this $210,000,000 was transferred directly to Refco (its original source) rather than routing the funds back to Refco through BAWAG, which was unnecessary now that the financial reporting benefit of the circular loans had been achieved. Significantly, this $250,000,000 round trip was for an amount over $60 million greater than Refco's reported net income of $187 million for the fiscal year ended February 28, 2004.

640. Maggio's Control of Refco Capital. Defendant Maggio's control of Refco Capital raises a strong inference of scienter. The funds used in the circular transactions originated with Refco Capital, of which Maggio was the President. Maggio signed several of the Refco Capital/Customer X Loan Agreements (specifically those dated February 21, 2003; February 20, 2004; August 25, 2004; November 26, 2004; December 30, 2004; February 23, 2005; and August 26, 2005), and was listed as the person to receive legal notices for both Refco Capital and RGHI for all transactions with Customer X from February 2003 onward. Maggio was forced from his position at Refco as a result of the disclosure of the circular transactions.

641. Defendants Bennett, Maggio, Trosten, Mayer Brown, and Collins' Direct Involvement in the Blatantly Fraudulent Transactions. As set forth above, e-mails and letters by and between BAWAG, Bennett, Maggio and Trosten relating to the blatantly fraudulent BAWAG transactions unequivocally demonstrate that those defendants had knowledge of, and participated in, the scheme to conceal the receivable owed by RGHI to the Company. These so-called "loan" transactions did not involve collateral, formal loan documentation or, in large part, interest payments. Thus, these "loan" transactions served no legitimate purpose and were on their face obvious shams designed to further the scheme to misstate Refco's financials. Similarly, as set forth above, Defendants Bennett, Maggio, Collins, and Mayer Brown had

knowledge of, and participated in, the scheme to conceal the receivable owed by RGHI to the Company. Defendants Collins and Mayer Brown negotiated and drafted the documentation for the sham round-trip "loan" transactions at the request of Bennett and Maggio, who signed the documents.

642. Silverman's Close Connections to Both Refco and RGHI. In addition to serving as Controller and Secretary of Refco, Defendant Silverman was Secretary of RGHI, the Bennett-owned entity that was used to carry out the fraudulent "Round-Robin" transactions. Silverman, a close confidant of Bennett, was placed on leave at or about the same time as Bennett and Maggio. According to a November 16, 2005 article on www.thestreet.com, sources have indicated that Silverman's leave was due to his involvement in the bookkeeping that allowed Bennett to conceal Refco's customer trading losses. Silverman's close ties to Bennett, his knowledge of accounting, his role as Controller of the Company (which included the recording of entries on the Company's books), and his being placed on leave amidst rumors of his involvement in the booking of the fraudulent transactions, are all facts that raise a strong inference of his scienter.

643. Severance Payment to Trosten. Within a few months of the LBO, Trosten received a severance payment of at least $45 million when he resigned as CFO in October 2004 at the age of 35, after serving in that position for only three years. This severance payment was not disclosed by the Company, and became public only after Trosten was forced to admit receiving it during testimony in an arbitration proceeding in the summer of 2005. Notably, Trosten's resignation and the severance payment occurred at the same time he knew that Grant Thornton was reviewing and/or re-auditing the Company's fiscal year 2002 financial statements.

The Former Refco Officer was one of many who viewed the size of the severance and the timing of Trosten's resignation – just as the IPO planning had begun – as very suspicious.

644. The approximately $45 million severance payment was exponentially greater than Trosten's annual compensation of $3,139,000 in salary and bonuses for fiscal year 2004 and was grossly disproportionate to his level of experience and expertise. It also far exceeded the severance package disclosed on page 88 of the Offering Memorandum, which would have entitled him to eighteen months of his base salary and annual bonus as of the date of termination. Trosten's extraordinarily lucrative $45 million severance package, which was one of many that was concealed from the public and was paid while the scheme to conceal the Company's uncollectible debts was actively ongoing and at the same time Grant Thornton was reviewing the Company's 2002 financial statements, raises a strong inference of scienter. In particular, it raises a strong inference that Trosten knew about the scheme to defraud the Company's investors, and that Bennett and the Company, including the Inside Defendants and the THL Defendants who approved his severance package, paid him off in an effort to buy his silence when he left the Company.

645. History of Legal Violations. Refco had a history of legal violations and improprieties that should also have alerted the Inside Defendants and Grant Thornton to the risk of financial manipulation. Indeed, from the time Bennett became the Company's chief financial officer in 1983, the CFTC penalized Refco at least 140 times for violations that included filing false trading reports, inadequate record-keeping, and inadequate supervision of its traders – the worst record in the industry. As reported in Bloomberg Markets in February 2006, a former CFTC official involved in regulating Refco explained that "Refco was a firm that said 'Show us where the edge is,' and then they played just over it." Refco's culture of rule-breaking and

repeated legal troubles should have, and but for their recklessness would have, alerted Grant Thornton, the THL Defendants, Mayer Brown, Collins and the Inside Defendants (who, unlike outside investors, had unfettered access to Refco's managers, books, and records) to Refco's fraudulent financial reporting.

646. For example, Refco was implicated in a SEC investigation related to a manipulative scheme involving shares of Sedona Corp., an Arizona technology company whose stock price had collapsed as a result of illegal short selling conducted through Refco. As late as May 2005, Refco had received a "Wells Notice" from the SEC, recommending civil enforcement proceedings against Refco for violations of the Securities Act and the Exchange Act – including violations of the Rule 10b-5 anti-fraud provisions promulgated thereunder. The investigation also focused on Defendant Maggio, then the President and CEO of Refco Securities, the Refco subsidiary through which the illegal short sales of Sedona stock had been cleared. The investigation was still ongoing at the time of Refco's IPO and the bankruptcy filing that occurred shortly thereafter. Mayer Brown represented Refco in connection with the matter.

647. Refco was also implicated in CFTC and SEC enforcement actions where Refco was accused of improperly shifting client funds between related party accounts – the same type of transactions that Refco used to hide the fraud in this case. For instance, Refco was directly involved in an enforcement action arising out of the conduct of S. Jay Goldinger ("Goldinger"), a Beverly Hills-based money manager who was accused of defrauding his clients by hiding losses in client accounts with Refco's assistance. Functioning much like a Ponzi scheme, the fraud was achieved by shifting funds between client accounts with losses and gains – profits were placed in the accounts of clients who asked for their money back while losses were stashed in accounts that appeared dormant. Refco participated in that scheme by allocating funds among Goldinger's

clients' accounts at the close of each trading day in accordance with Goldinger's instructions. As the Inside Defendants and Grant Thornton knew well before the Class Period, Refco paid $8 million in 1999 to settle charges brought by the CFTC and the Chicago Board of Trade and over $40 million in arbitration awards to defrauded investors.

648. In yet another forerunner of the circular transactions Refco used to hide its massive related-party receivable, Refco was fined $1.2 million by the CFTC in 1994 for using funds in client accounts to pay off its own debts. As discussed in an October 13, 2005 article available from Bloomberg Newswires, according to the CFTC at the time, Refco improperly availed itself of as much as $123 million in client funds on an "almost daily basis" in order to pay off debts owed by Refco Capital. Refco settled the CFTC action without admitting or denying guilt, but with a promise to stop unlawfully commingling funds. Aspects of this matter sufficient to put the Inside Defendants and Grant Thornton on notice of potential improprieties at Refco were well known to these Defendants before the Class Period.

649. In another instance involving the improper manipulation of related accounts, Refco hid losses in a client's account from the CFTC and Chicago Board of Trade by depositing its own funds into the client's depleted account and obtaining a promissory note from the client on the side. During the late 1990s, the Eastern Trading Company, a bullion trading company based in Dubai, suffered massive speculative losses resulting in a debit balance of $28 million in their account. Such a debit would have triggered reporting requirements. In order to avoid these requirements, Refco "repaid" the debit balance with its own funds and took a promissory note from the Eastern Trading Company for the same amount. As Judge Richard Posner explained in an opinion issued in 2000 by the United States Court of Appeals for the Seventh Circuit, "it is true that for reasons having to do with reporting requirements imposed by the commodities

exchanges, Refco did not want to reveal the debit in Eastern's account, and that is why it funded it with a loan from its affiliate." Eastern Trading Co. v. Refco, Inc., 229 F.3d 617, 626 (7th Cir. 2000). Although holding that Refco was entitled to performance on the promissory note, Judge Posner concluded that the arrangement existed "for the disreputable purpose of fooling the Board of Trade and the Commodities Futures Trading Commission." Id. Aspects of this matter sufficient to put the Inside Defendants and Grant Thornton on notice of potential improprieties at Refco were well known to these Defendants before the Class Period.

650. Refco's history of regulatory violations was also well known to the THL Defendants, even before the LBO. [redacted] The THL Defendants' knowledge of Refco's checkered past—dating back even prior to their insider status at the Company—should have caused them to exercise additional scrutiny in reviewing the Company's books and records. The THL Defendants' failure to uncover the Company's fraud, under these circumstances, was at best reckless.

651. Accounting Department Was In "Shambles." The Former Refco Officer described above stated that the accounting department at his unit of Refco was overworked and understaffed, with the result that "the Accounts Department was an absolute shambles." This Former Refco Officer also stated that, in or about 2003-2004, it was apparent to him that Refco had "absolutely no financial controls or reporting systems;" that he had "never seen an operation

run anywhere like [he] witnessed at Refco;" and that there was a "very, very laissez faire attitude toward risk management and compliance in general." In addition, a former member of Refco's accounting group, who worked in the New York office and was responsible for management reporting within the futures business, stated that prior to the IPO there was "no internal audit" or significant accounting infrastructure of any kind. When Refco's management finally did appoint a Director of Internal Audit shortly before the IPO, they selected Defendant Silverman, whose role with RGHI and close ties to Bennett prevented him from performing that function in an objective and independent fashion.

652. Grant Thornton's Empty Threat to Walk Away From the IPO Process. The deficiencies in Refco's accounting department were well known to Grant Thornton, which noted "significant deficiencies" in Refco's internal controls in October 2004, including a lack of adequate resources and expertise in Refco's accounting group. When those deficiencies had not been corrected by December 2004, Grant Thornton's audit team expressed concerns to Grant Thornton's Professional Standards Group regarding whether Grant Thornton should be involved in the IPO. Inexplicably, however, Grant Thornton provided its consent to the inclusion of its audit opinion in the Bond Registration Statement despite these concerns.

653. And yet, Grant Thornton had consented to the inclusion of its audit opinion in the Bond Registration Statement.

654. Thus, Bennett

called Grant Thornton's bluff and indicated his intent to proceed with the IPO as quickly as possible. Unfortunately for investors, Grant Thornton did not stick to its guns and ultimately consented to the inclusion of its audit report in the IPO Registration Statement despite the Company's failure to correct the "significant deficiencies" in its internal controls – just as Grant Thornton had done in connection with the Bond Registration Statement. Grant Thornton's decision to proceed under these circumstances evinces, at best, a reckless disregard for the truth and accuracy of Refco's financial statements and of Grant Thornton's own audit opinions.

B. Motive and Opportunity

655. The unique factors that motivated the Inside Defendants and the THL Defendants to conceal the Company's massive related-party receivable in order to complete the Bond Offering and the IPO also raise a strong inference of scienter. The LBO in June 2004 and the recapitalization of the Company leading up to Refco's much-anticipated IPO fostered an environment of greed and recklessness amongst Refco insiders eager to cash in on the massive amount of capital suddenly flowing into the thinly-capitalized, highly leveraged firm. Despite the fact that $2.3 billion was raised in connection with the THL Partner Defendants' recapitalization, in the year leading up to the IPO and the subsequent collapse of Refco, the Inside Defendants stripped close to $1 billion from the Company. As described below, they did so through sales of equity interests in the LBO; enormous outright grants of Refco common stock; the "green shoe" oversubscription option on the IPO, the proceeds of which were used to personally enrich RGHI and the Officer Defendants; further grants in the form of "Restricted Stock Units" ("RSU") to the Officer Defendants and the Audit Committee Defendants – awards of large blocks of stock that vest over time upon certain conditions; and several other bonus and compensation plans. Public disclosure of the related-party receivable, and the sham transactions

used to conceal it, would have prevented the LBO (which was financed via the Bond Offering) and the IPO from occurring.

656. Cashing Out of Equity Interests in the LBO. The feeding frenzy began in June 2004, when the THL Partner Defendants and their passive co-investors purchased a 57% stake in Refco for approximately $507 million in cash. According to press reports, these funds were paid to RGHI, which at the time was owned by Bennett and Grant. In connection with the transactions, Refco Group transferred $550 million in cash plus all of its equity interests in Forstmann-Leff International Associates, LLC (valued at approximately $231 million) to RGHI. According to an October 20, 2005 article on Bloomberg newswires, through an additional agreement with the THL Partner Defendants, Bennett (along with Grant) was also entitled to another $120 million, which consisted of $12 million in cash and $108 million in the form of debt forgiveness. Additionally, Bennett (along with Grant) received $24.9 million in penalties for the early redemption of outstanding debt, plus $19.8 million due to certain change-of-control provisions. Bennett (through RGHI) also rolled over a $383 million equity investment in the Company, representing a 43% stake.

657. Payments to the Officer Defendants in the LBO. Officer Defendants Trosten, Murphy, Sexton, Maggio, and Klejna also realized significant financial windfalls in connection with the LBO. In connection with the THL Partner Defendants' investment, eight Refco executives had their interests in a Company-endorsed profit-sharing agreement liquidated by RGHI, allowing them to share in payments totaling over $100 million, with Trosten receiving $48 million, Bennett receiving $25 million, Murphy receiving $13.7 million, Sexton receiving $9 million, Maggio receiving $8.4 million and Klejna receiving $6.5 million. This was in addition to the multi-million dollar salaries and bonuses received by these executives over the period of

2003 to 2005 and the generous stock option awards they received in advance of the IPO. Moreover, of these amounts, over $4 million payable to Murphy, over $2.3 million payable to Maggio, and nearly $2 million payable to Sexton was scheduled to be paid in equal installments on December 31, 2005 and December 31, 2006, but would be accelerated if an IPO were consummated before those dates. These large payments strongly indicate these Defendants' motivation and intent to use the LBO and the IPO to extract large personal payments, raising a strong inference of scienter.

658. [redacted]

659. Direct Equity Interests. In the lead-up to the IPO, the Officer Defendants and the Audit Committee Defendants received unusually large grants of Refco common stock. The benefits of these grants could only be realized through an IPO, which created a public trading market for the stock and substantially increased its trading value, thereby greatly increasing these Defendants' personal wealth. The following chart sets forth the Officer Defendants', Audit Committee Defendants', and THL Partner Defendants' Refco stock holdings on the eve of the IPO, and the value thereof at the offering price, as set forth in the Prospectus:

Defendant	Stock Held at IPO	Value at IPO Price
Bennett	48,427,000 shares	$1,065,394,000
Thomas H. Lee Equity Fund V, L.P.	44,322,000 shares	$975,084,000
Thomas H. Lee Parallel Fund V, L.P.	11,500,000 shares	$253,000,000
Thomas H. Lee Equity (Cayman) Fund V, L.P.	611,000 shares	$13,442,000
1997 Thomas H. Lee Nominee Trust	73,000 shares	$1,606,000
Sherer	464,000 shares	$10,208,000
Sexton	596,000 shares	$13,112,000
Murphy	534,000 shares	$11,748,000
Maggio	503,000 shares	$11,066,000

Defendant	Stock Held at IPO	Value at IPO Price
Klejna	261,000 shares	$5,742,000
Breitman	13,000 shares	$286,000
Gantcher	13,000 shares	$286,000
O'Kelley	13,000 shares	$286,000

660. With respect to the 56,432,000 shares of Refco stock that were held by the Thomas H. Lee Equity Fund V, L.P, the Thomas H. Lee Parallel Fund V, L.P. and the Thomas H. Lee Equity (Cayman) Fund V, L.P. just prior to the IPO, the Prospectus also identifies defendants Lee, Harkins, Jaeckel, and Schoen as beneficial owners of those shares.

661. The substantial pecuniary benefits that these Defendants received, and could only have received, through an IPO raises a strong inference that they acted with scienter. Indeed, the THL Defendants (not including their passive co-investors) collectively sold 7.72 million shares in the IPO, receiving cash proceeds of approximately $170 million while retaining a 37.8% ownership stake. Defendant Bennett (through RGHI) sold 5.375 million shares in the IPO, netting over $118 million in cash while retaining a 33.8% stake in the Company. Significantly, a "lock-up" agreement with the Stock Underwriter Defendants was the only impediment preventing the other Officer Defendants from similarly cashing in all or a portion of their equity interests in the IPO. That "lock-up" agreement prevented the other Officer Defendants and the Audit Committee Defendants from selling their shares for 180 days after the IPO – a date that was ultimately preceded by Refco's collapse. The THL Defendants', Officer Defendants' and Audit Committee Defendants' clear motivation to conduct an IPO raises a strong inference of scienter.

662. The Green Shoe Option. The Officer Defendants, the THL Partner Defendants, and RGHI also stood to benefit substantially from the use of the "green shoe" option in case of oversubscription on the IPO. Refco registered nearly four million additional shares for sale in the IPO in case the 26.5 million shares planned for sale in the IPO were over-subscribed. As set forth in the Prospectus, the proceeds from the exercise of this "green shoe" option were distributed directly to the shareholders of record before the IPO, including the Officer Defendants, the THL Partner Defendants, and RGHI. In other words, by creating sufficient demand for Refco stock at the time of the IPO, these Defendants received an extra cash payment from the sale of the shares dedicated to cover the over subscription. The prospect of these cash payments further motivated these Defendants to conceal and misrepresent Refco's true financial condition. Ultimately, there was such strong demand generated around the IPO that it triggered the sale of an additional 3,975,000 shares by Refco to cover over-allotments, the extra proceeds of which went directly to Bennett (through RGHI), the THL Partner Defendants and the Officer Defendants in the form of a "dividend" totaling over $82.2 million (after deduction of the Underwriter Defendants' fees). Upon information and belief, the following chart sets forth the approximate cash payments realized by these Defendants as a consequence of the green shoe option (based on a pro-rata distribution of shares to existing shareholders):

Defendant	Pre-IPO Interest	Pro Rata Cash Payment
Bennett (through RGHI)	42.1%	$34,607,463
Thomas H. Lee Equity Fund V, L.P.	38.5%	$31,648,155
Thomas H. Lee Parallel Fund V, L.P.	10.0%	$8,220,300
Thomas H. Lee Equity (Cayman) Fund V, L.P.	0.53%	$435,676

Defendant	Pre-IPO Interest	Pro Rata Cash Payment
1997 Thomas H. Lee Nominee Trust	0.06%	$49,322
Sherer	0.40%	$328,812
Sexton	0.52%	$427,456
Murphy	0.46%	$378,134
Maggio	0.44%	$361,693
Klejna	0.23%	$189,067

663. Defendants Focused on IPO Riches. By April 2005, the ground work had been laid for the Officer Defendants, the Audit Committee Defendants and the THL Defendants to sell a huge stake of the Company to the investing public through an IPO. An IPO was extremely attractive to these Defendants because it would allow them to reap huge financial rewards from their ownership stake in the Company. Not only would these Defendants collectively stand to make more than $1 billion from an IPO, but it would have other benefits as well. For example, it would (i) create a public trading market that would allow these Defendants to sell their stock for huge profits or, at a minimum, use their Refco stock as collateral for personal loans; (ii) create a significant capital infusion for the Company that would increase the book value of all Refco shares, including the millions of shares that these Defendants would retain after an IPO; and (iii) result in a huge one-time "special dividend" payment through the green shoe option that would be used to line the pockets of these corporate insiders.

664. A successful IPO would also provide additional benefits to the THL Defendants because they were in the process of marketing a new private equity fund, which required them to raise approximately $7.5 billion from institutional investors. The THL Defendants could

"leverage" the publicity provided by a high-profile IPO of Refco by touting the quick profits they and their co-investors had realized through their involvement with the Company, and thereby market their new fund and raise billions of dollars of additional capital from institutional investors. By demonstrating a quick profit on the Refco IPO, the THL Defendants greatly increased their chances of raising the capital to form a new fund in the hyper-competitive leveraged buyout community. The THL Defendants stood to make huge fees and profits from their new private equity fund.

665. For example, the Former Refco Officer stated that Refco purchased the Company at which he previously worked because, in his view, Refco was acquiring brokerage companies solely to build volume in order to "get ready for the big payoff which was the IPO." He stated that the New York Five did not care about the quality of revenue at operating units such as the one he ran, because their only objective was to build volume by opening new offices, without evaluating whether adding these offices was a sound business decision. The Former Refco Officer communicated his concerns over these issues to the New York Five, but they did not respond. While he was at first puzzled by senior management's lack of responsiveness, over time it became clear to him that "really they didn't care, because ultimately this was all a house of cards anyway." According to this Former Refco Officer, "the five guys who were running the company were all hooked into the IPO."

666. RSU Grants to Officers. The Officer Defendants also received huge grants of RSUs in advance of the IPO, and were consequently motivated to conceal Refco's true financial condition. Under the terms of the Restricted Stock Unit agreements, 50% of a grant would vest ratably over four fiscal years, and the other 50% would vest upon the achievements of undisclosed EBIDTA targets. Upon the closing of the LBO and the Bond Offering on August 5,

2004, Bennett received 1,203,365 RSUs; Murphy, Sexton and Maggio each received 701,963 RSUs; and Klejna received 350,981 RSUs. On December 6, 2004, Sherer was awarded 690,000 RSUs. These large grants of RSUs motivated the Officer Defendants to conceal Refco's true financial condition in order to conduct an IPO because the RSUs were worthless without a public market for the underlying shares. Further, the RSUs' emphasis on EBIDTA targets also motivated the Officer Defendants to conceal Refco's bad debts, because writing off those debts as required would have substantially reduced EBIDTA and prevented the relevant vesting conditions from being triggered.

667. RSU Grants to the Audit Committee. Each of the three Audit Committee Defendants also received 20,000 RSUs in advance of the IPO. This arrangement was extremely unusual not only because of its impact on the Audit Committee Defendants' purported independence, but also because the Audit Committee Defendants were the only members of the Board to receive these RSU grants. In other words, the three board members responsible for the "integrity of [Refco's] financial statements" were specially compensated by a massive grant of RSUs that would have been rendered worthless by revelation of Refco's true financial condition because such a revelation would have prevented the IPO from occurring. Accordingly, the highly unusual grant of RSUs to the Audit Committee Defendants also raises a strong inference of scienter.

668. Bonus Compensation. The Officer Defendants were also motivated to conceal Refco's true financial condition as a result of the Senior Management Bonus Pool Plan ("Bonus Plan"). As discussed in the Prospectus, the Bonus Plan would only pay bonuses to senior management subject to performance criteria based on EBIDTA. Had they not been concealed, the uncollectible receivables would have been written off, thereby causing a substantial reduction

in (if not an entire elimination of) Refco's EBIDTA. The Officer Defendants' desire to receive bonuses under the Bonus Plan also raises a strong inference of scienter.

669. Each of the Inside Defendants had the opportunity to commit fraud, because each of them prepared, reviewed and/or approved the financial statements and other documents containing the materially false and misleading statements and omissions as alleged herein, and thus had the ability to influence and control the content of those statements. RGHI had the opportunity to commit fraud by virtue of its exercise of control over the Company, and its ability to influence and control the content of the Company's public statements, including those that were materially false and misleading as alleged herein.

670. Review and Payment of Mayer Brown Legal Fees. As CFOs, Trosten and Sherer were responsible for receiving and authorizing the payment of legal bills from Mayer Brown that, on information and belief, described the legal work performed by Mayer Brown in connection with documenting the transactions described above. As General Counsel, Klejna was responsible for authorizing and supervising this outside legal work, and reviewing the subsequent bills. Accordingly, these Defendants were, or should have been, alerted to a bright red flag regarding the fraudulent activities described herein.

671. Grant Thornton's Motive to Appease Refco's Management. Defendant Grant Thornton was also significantly motivated to actively conceal or recklessly disregard Refco's massive related party receivable and the circular transactions that concealed it. Refco was a prestigious client for Grant Thornton – a client that Grant Thornton did not want to antagonize with probing and thorough audit inquiries. Indeed, Refco had not always taken its auditing business to Grant Thornton. Andersen – the Big Five firm that collapsed in the wake of the notorious Enron scandal – had previously been Refco's auditor. Afterward, former Andersen

partner Mark Ramler, Andersen's engagement partner for Refco, moved to Grant Thornton and brought the Refco account with him. This new business was a major triumph for Grant Thornton, which had picked up the crumbs of Andersen's collection of former clients as it watched the (now) Big Four accounting firms take the overwhelming majority. According to a New York Times article on February 20, 2006, Grant Thornton picked up less than 5% of Andersen's former clients – and none in the S&P 500 – as the remaining firms competed over Andersen's former business. Grant Thornton was thus motivated to restrain its approach to auditing Refco in order to minimize the risk that the Company – the crown jewel former Andersen client – would take its business elsewhere. Willful blindness to Refco's false and misleading financial reporting was the result. In fact, Defendant Grant Thornton performed auditing procedures so deficient, and engaged in such an egregious refusal to see the obvious or to investigate the doubtful, that each time it audited the Company, its audit amounted to no audit at all.

672. Moreover, Refco was a company that actively anticipated conducting an IPO. The IPO market in 2004 and 2005 had slowed substantially from previous years. At the same time, there was substantial investor interest in companies, like Refco, that dealt in derivatives. In this sluggish market environment, the prospect of acting as Refco's auditor in connection with its IPO, especially in a market eager for investment opportunities in the derivatives business, would have been seen as a major coup for Grant Thornton. Grant Thornton was thus substantially motivated to retain Refco as a client, and ensure that Refco experienced a successful IPO, in order to market itself to other clients in the derivatives industry. This powerful motive also raises a strong inference of Grant Thornton's scienter.

673. [redacted]

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

674. The Audit Committee Defendants acted recklessly in the performance of their duties and, as a direct result, facilitated the fraudulent scheme described herein. The vital importance of an audit committee to the integrity of a company's financial reporting is emphasized by the SEC in the rules promulgated pursuant to the Sarbanes Oxley Act of 2002:

> The audit committee, composed of members of the board of directors, plays a critical role in providing oversight over and serving as a check and balance on a company's financial reporting system. The audit committee provides independent review and oversight of a company's financial reporting process, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices and internal controls, and that the outside auditors, through their

own review, objectively assess the company's financial reporting practices.

675. The Audit Committee Defendants were responsible for assisting the entire board in the oversight of Refco's financial statements. Indeed, it is fundamental that an audit committee have a detailed understanding of the Company, and particularly the adequacy of its financial systems and internal controls, as well as the soundness of the Company's business model (including the procedures for extending "margin" loans to the Company's customers, the existence of related-party transactions, and the collectibility of the Company's receivables).

676. The IPO Registration Statement set forth the "primary purpose of the audit committee" as:

- Assist the board's oversight of:
    - the integrity of our financial statements;
    - our compliance with legal and regulatory requirements;
    - our independent auditors' qualifications and independence;
    - the performance of our independent auditors and our internal audit function; and
    - prepare the report required to be prepared by the committee pursuant to SEC rules.

677. The Charter of the Audit Committee also sets forth, in great detail, the duties and responsibilities of the Audit Committee Defendants. These duties included:

(a) Reviewing and discussing with management, internal audit and the independent auditor the adequacy and effectiveness of Refco's accounting and internal control policies and procedures on a regular basis, including the responsibilities, budget, compensation and staffing of the Company's internal audit function, through inquiry and discussions with the independent auditors, management and head of internal audit;

(b) Discussing guidelines and policies governing the process by which senior management of Refco and the relevant departments of the Company, including the internal auditing department, assess and manage the Company's exposure to risk, as well as Refco's major financial and other risk exposures and the steps management has taken to monitor and control such exposures;

(c) Reviewing and discussing with management the progress and results of internal audit projects, and, when deemed necessary or appropriate by the Audit Committee, assigning additional internal audit projects to the head of internal audit;

(d) Reviewing and discussing with management the Company's administrative, operational and accounting internal controls, including special audit steps adopted in light of the discovery of any significant and material control deficiencies;

(e) Meeting periodically with the general counsel, and outside counsel when appropriate, to review legal and regulatory matters, including (i) any matters that may have a material impact on the financial statements of the Company and (ii) any matters involving potential or ongoing material violations of law or breaches of fiduciary duty by the Company or any of its directors, officers, employees or agents or breaches of fiduciary duty to the Company; and

(f) Reviewing and discussing with management, the Company's independent auditors and the head of internal audit, material financial arrangements of the Company which do not appear on the financial statements of the Company.

These duties reflect the Audit Committee's comprehensive involvement in Refco's audit and financial reporting processes, and raise a strong inference that, but for the Audit Committee Defendants' reckless disregard for these duties, the falsehoods and misleading disclosures

described above would not have occurred.

678. The IPO Registration Statement also stated that Defendant O'Kelley would serve as chairman of the audit committee and "qualifies as an independent 'audit committee financial expert' as such term has been defined by the SEC in Item 401(h)(2) of Regulation S-K." In order to satisfy Item 401(h)(2), Defendant O'Kelley was required to have extensive experience relating to reporting financial statements. This Item provides:

> (2) For purposes of this Item, an audit committee financial expert means a person who has the following attributes:
>
> (i) An understanding of generally accepted accounting principles and financial statements;
>
> (ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
>
> (iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;
>
> (iv) An understanding of internal control over financial reporting; and
>
> (v) An understanding of audit committee functions.

679. Given these specific responsibilities and their supposed expertise, the Audit Committee Defendants were reckless in failing to detect, and in failing to put in measures to prevent, the fraudulent scheme described herein. Indeed, the Audit Committee's reckless failure to perform its duties is demonstrated by the fact that, as of February 28, 2005, Refco's auditors identified two significant deficiencies in the Company's internal controls. As stated in the IPO Registration Statement, a "significant deficiency" is defined as "a deficiency that results in more than a remote likelihood that a misstatement of the financial statements that is more than inconsequential will not be prevented or detected." The specific deficiencies noted were:

(a) "the need to increase [the Company's] existing finance department resources to be able to prepare financial statements that are fully compliant with all SEC reporting guidelines on a timely basis"; and

(b) "lack of formalized procedures for closing [the Company's] books."

680. These two deficiencies fall squarely into the Audit Committee Defendants' area of responsibility, as described above, and should have alerted them that there was a significant risk of fraudulent activity at the Company. Moreover, these deficiencies created an environment where it was easy for Bennett, Maggio and others to fraudulently manipulate Refco's financial statements. As set forth in AU § 316, "fraud risk factors" include "domination of management by a single person or small group" and "weaknesses in internal control."

681. The internal control deficiencies noted by Grant Thornton had existed through the entirety of fiscal year 2005, and in prior years as well. However, the existence of these deficiencies was not discovered, disclosed, or corrected by the Audit Committee Defendants. If the Audit Committee Defendants had not been reckless in the performance of their responsibilities, they would have discovered these deficiencies – which go to the heart of their oversight responsibilities – long before the auditors noted them in connection with the February 28, 2005 year-end review. Indeed, within two months after a new Controller was hired to improve the manpower in the Company's finance department, that Controller discovered and blew the whistle on the fraud.

682. To compound their failure to identify these issues, the Audit Committee Defendants took no steps whatsoever to remedy these issues in a timely fashion. For instance, the IPO Registration Statement states that the Company was "in the process" of hiring "additional internal audit and financial personnel" as of August 10, 2005. Thus, approximately

six months after learning of these deficiencies – which they should have known about much earlier – the Audit Committee Defendants were still in the process of attempting to remedy them. While this delay would be reckless under any circumstance, it is particularly reckless here because in the intervening sixth months Refco had conducted two major transactions with respect to the issuance of public securities: the Exchange Offer for the Registered Bonds and the IPO.

683. The reckless failure of the Audit Committee Defendants to remedy these identified deficiencies in a timely fashion can be explained, at least in part, by their motivation to effect these two transactions in the Company's securities. As explained above, each of the Audit Committee Defendants was granted 20,000 shares of RSUs that vested over a period of time. These RSUs were essentially worthless unless and until Refco conducted an IPO. Upon consummation of the IPO, these units instantly became worth hundreds of thousands of dollars, with the potential of increasing in value in the future. In order to ensure that nothing impeded them from reaping the monetary rewards of the IPO, the Audit Committee Defendants recklessly ignored their responsibilities to immediately correct the identified "significant deficiencies" in Refco's financial controls.

684. As set forth above, the fraudulent scheme was eventually discovered by a Refco Controller who had been with the Company for only two months. If the Audit Committee Defendants had performed their duties and ensured that this Controller or other new employees had been hired in a timely fashion prior to the Exchange Offer and the IPO, it is likely that the fraud at Refco would have been revealed much earlier, saving investors hundreds of millions of dollars.

D. Additional Allegations of Scienter Against the THL Defendants

685. The THL Defendants were on notice of serious problems at Refco, by virtue of their purported "diligence" process in connection with the LBO that afforded them access to significant inside information of Refco. That process began in late 2003, and involved not only the THL Defendants but also their professional advisors, including legal counsel (the law firm of Weil Gotshal & Manges LLP), a "Big Four" accounting firm (KPMG LLP) and others. However, during the course of that process, Refco and its management failed to provide the THL Defendants and their advisors with certain information requested by the THL Defendants. [redacted]

686. [redacted] Such information was critical to an understanding of the quality and strength of Refco's balance sheet.

687. [redacted]

688.

689. The THL Defendants knew that they had not been provided critical financial information from Refco and that Refco's management and accounting functions were of questionable strength. Despite the huge red flags that these facts should have raised, the THL Defendants proceeded to make a formal proposal to conduct the LBO. The THL Defendants also recognized that they lacked complete and adequate information regarding Refco's receivables, as evidenced by the list of "Pending Legal, Financing And Tax Due Diligence Requests" that was attached as Exhibit C to the letter and included "[a]nalysis of receivables as at February 28, 2002, 2003, November 30, 2003 and February 29, 2004 quantifying amounts due from … [c]ustomers; [b]rokers and dealers; [s]hareholder loans; and [o]ther loans, etc."

690. The THL Defendants' inability to obtain important information regarding Refco's receivables continued after the date of the proposal letter. [redacted]

691. On May 17, 2004, KPMG provided a draft report to the THL Defendants which summarized its conclusions following its due diligence efforts. [redacted] KPMG's report also reflected that Trosten had told KPMG of a $42 million reserve that Refco had been holding for seven years in connection with customer losses in the Asian financial crisis, thus putting the THL

Defendants on notice of long overdue receivables. Thus, the THL Defendants knew, but recklessly disregarded, that KPMG had not been given adequate information to fully assess the quality of Grant Thornton's audits of Refco's financial statements. Nonetheless, the THL Defendants forged ahead with the LBO.

692. According to the VR Complaint, although the THL Defendants at one point requested a meeting with E&Y – Refco's former tax advisor, which had resigned in 2003 due (among other reasons) to Refco's refusal to make its suggested disclosures regarding the RGHI receivables – Bennett refused to allow the meeting, and the THL Defendants simply abandoned the request. Bennett's refusal to allow the meeting—in light of the THL Defendants' knowledge of the Company's "fast and loose" reputation and of the Company's pattern of failing to provide full responses to their diligence requests—should have raised another red flag with the THL Defendants. Had the THL Defendants followed the simple step of insisting on the meeting with E&Y, they likely would have uncovered the fraud.

693. [redacted]

The THL Defendants, accordingly, knew that Refco was willing to sweep damaging information under the rug until after the LBO closed, yet they nonetheless proceeded with that transaction.

694. In late May 2004, just as they were finalizing the documentation for the LBO and preparing to make a public announcement, the THL Defendants learned even more damaging information about Refco when Schoen received a tip from a senior investment banker at Bear Stearns whose cousin was a former Refco executive. The investment banker reported to Schoen that his cousin, whom the THL Defendants and KPMG would later refer to as "Deep Throat," had told him that Refco had been "sloughing off" trading losses into a Refco subsidiary during the 1990s, and that all was not well with Refco. According to the Examiner's Report, the investment banker told Schoen that Deep Throat had worked for Refco during the 1990s while this "sloughing off" of losses was occurring. Upon information and belief, Schoen also knew that the investment banker himself was the grandson of Refco's founder, which further heightens the credibility of the information the banker provided. [REDACTED]

695. The THL Defendants conveyed the Deep Throat tip to KPMG on May 26, 2004, and on May 28, 2004, KPMG sent Schoen a list of questions and additional diligence procedures for the THL Defendants to follow up on to investigate Deep Throat's report. The top-priority items on the list of additional procedures were to obtain RGHI's financial statements and recent tax returns, reconcile them to Refco's books, and "[i]solate and investigate all items not flowing through from [Refco]." KPMG also suggested that the THL Defendants "[o]btain details and understand the nature of inter-company financing arrangements, both on- and off-balance sheet." According to the Examiner's Report, the KPMG partner who proposed these procedures told the Examiner that they would have been "likely fairly simple" to address promptly, and the Examiner "conclude[d] that these procedures, if implemented, should have detected the fraud."

696. Incredibly, the THL Defendants never asked KPMG to perform **any** of the additional procedures that KPMG had proposed in response to the Deep Throat tip. Instead, they simply discussed the matter with Bennett, accepted his explanations at face value without any further investigation, and dismissed the tip based solely on his verbal assurances – irrespective of the fact that the tip came from a former Refco employee who claimed to have personal knowledge of the matters he was reporting. [REDACTED]

697. [REDACTED] The THL Defendants accepted those assurances without conducting any further inquiry and without obtaining any corroboration. By recklessly brushing the "Deep Throat" tip under the rug and failing to investigate beyond talking to Bennett—who had a clear incentive to lie if, as the tip suggested, Refco's management was involved in the inappropriate activity—the THL Defendants missed the opportunity to discover that what Deep Throat said

was true: Refco had been inappropriately "sloughing off" massive losses into related party accounts.

698. Despite knowing that Refco and its management had refused to provide important information, and had gone so far as to try to conceal adverse information from them, and despite being warned about the precise type of fraud whose disclosure would later cause the Company's downfall, the THL Defendants recklessly went forward with the LBO and acquired a controlling 57% interest in Refco, knowing that the risk would be borne by public investors who purchased Refco's Bonds. Moreover, the THL Defendants undoubtedly took comfort in the fact that they intended to quickly monetize their interests in Refco by conducting a lucrative IPO in the near future, thereby further reducing the THL Defendants' own risk. The documentation for the LBO was signed on or about June 8, 2004 – a mere week after the THL Defendants heard (but did not verify) Bennett's explanation for the Deep Throat tip.

699. The week after the Merger Agreement was signed, on June 17, 2004, a jury returned a verdict against Refco in a lawsuit brought by Tradewinds Financial.

700. Once the THL Partner Defendants' positions as controlling shareholders of Refco were solidified with the closing of the LBO, the THL Defendants had unfettered access to all of Refco's books and records and other inside information. The THL Partner Defendants appointed

four directors (the THL Individual Defendants) to Refco's seven-member board, and Thomas H. Lee Partners executives Schoen, Jaeckel and George Taylor became President, Treasurer, and Secretary, respectively, of Refco. Additionally, pursuant to the Management Agreement, THL Managers (and thereby THL Partners and the THL Individual Defendants) were involved in the day-to-day management of Refco's operations – services for which THL Managers was paid over $31 million upon the closing of the LBO, and was to receive additional annual payments of the greater of $25 million or 1% of Refco's EBITDA.

701. By virtue of their status as insiders at Refco, the THL Defendants were aware of significant problems at the Company, including the gross inadequacy of Refco's accounting and auditing functions, both internal and external. Yet, the THL Defendants failed to correct those problems and instead focused their energies on rapidly unloading a significant portion of their equity stake to unsuspecting public investors through an IPO.

702. For example, on or about March 31, 2005, the THL Defendants received a copy of the letter dated October 15, 2004 from Grant Thornton to Bennett (the "Management Letter"), describing deficiencies in Refco's internal accounting function.

i.

704. At this point, the THL Defendants were aware (if they were not before) of serious deficiencies in Refco's internal controls which called into question the accuracy and reliability of its financial reporting. Nonetheless, the THL Defendants recklessly (or perhaps intentionally) did not take action to ensure that these deficiencies were resolved prior to the IPO.

705. The THL Defendants also documented – internally – their knowledge of deficiencies in Refco's internal accounting function.

Despite their awareness of these deficiencies in early 2005, the THL Defendants pressed forward with the IPO without taking any steps to ensure that these problems were remedied or that the financial statements being disseminated to public investors were accurate.

706. Similarly, the THL Defendants chose not to replace Grant Thornton as Refco's outside auditor following the LBO, despite knowing that Grant Thornton lacked the necessary competence and independence to continuing serving in that role.

707.

708. A few months later, in February 2005, KPMG was proposing to do a risk evaluation for Refco in advance of the IPO. On February 25, 2005, Sherer informed KPMG that they would not be proceeding with that evaluation.

709. Thus, ultimately, the THL Defendants put their own interests in completing the IPO quickly and avoiding increased scrutiny and a potential restatement, above those of outside investors like Plaintiffs who were relying upon the accuracy of Refco's financial statements. This deliberate choice by the THL Defendants, particularly when coupled with their knowledge of deficiencies in Refco's internal controls and in its financial and accounting functions, demonstrates a blatant and reckless disregard for the accuracy of Refco's financial statements.

E. Additional Allegations of Scienter Against Mayer Brown and Collins

1. Motive and opportunity

710. Mayer Brown is a sophisticated law firm that served as primary outside counsel for Refco since at least 1994. As the partner-in-charge of the Refco account, Collins had a

longstanding relationship with the Company going back nearly twenty years. In an article published in *The Street.com* in November 2005, a Refco employee was quoted as stating that "Collins was the go-to-guy at Refco," and that all important transactions and deals were cleared through Collins or Mayer Brown attorneys who worked for Collins.

711. Refco's dependence on the legal services provided by Mayer Brown is further confirmed by the fact that Refco had a very small in-house legal team which lacked sufficient resources to handle the numerous regulatory, litigation and transaction matters that Refco was involved in on a regular basis. As Refco disclosed in documents publicly filed with the SEC, "most aspects of our business are subject to stringent regulation by U.S. federal and state regulatory agencies and derivatives and securities exchanges and by non-U.S. government agencies or regulatory bodies and exchanges." Refco was regulated domestically by, among others, the Commodity Futures Trading Commission, the SEC, the NASD, the Federal Reserve Board, and the Department of Treasury. Refco also disclosed that its foreign subsidiaries were "regulated extensively by non-U.S. governments, exchanges, self-regulatory organizations, central banks," including the Financial Services Authority in Great Britain and Euronext.liffee. In addition, Refco was involved in numerous litigations and arbitrations in federal and state courts across the country, was the subject of numerous disciplinary actions and fines levied by the various agencies who regulated the Company, and completed approximately nineteen corporate acquisitions between 1999 and 2005. In short, Refco had an enormous need for legal services, and Collins and Mayer Brown were the "go to" outside counsel for Refco from 1994 until October 2005.

712. Examples of Mayer Brown's representation, through Collins, of Refco, Bennett, and/or Refco-related entities include:

(a) Representing Bennett and Refco in connection with the LBO;

(b) Representing Refco in connection with the Bond Offering;

(c) Representing Refco in connection with the registration of the 144A Bonds;

(d) Representing Refco in connection with the IPO;

(e) Representing Bennett in connection with the negotiation of a June 8, 2004 Executive Employment and Non-Competition Agreement between Refco Group Ltd., LLC and Bennett (paragraph 14(ii) of the agreement states that all notices to Bennett under the contract should be directed to Collins);

(f) Representing Refco in connection with the formation and initial financing of CIM Ventures, Inc., an entity that would later become one of Refco Capital's counterparties in the round-trip transactions;

(g) Representing Refco in dozens of federal and state court litigations and in arbitrations throughout the world;

(h) Providing Refco with tax advice;

(i) Representing Refco in connection with an acquisition of a portion of the Company by BAWAG;

(j) Representing RGHI in a March 2005 sale of assets to Bridgepoint Capital Ltd.; and

(k) While Collins' "attorney profile" on the Mayer Brown website now omits any mention of Refco, a profile of him formerly available on "Chambers and Partners" noted that he was the "Lead attorney in Refco's acquisitions of RB&H, Lind-Waldock, LFG, and Main Street Trading Company."

713. In short, the vast majority of important transactions and deals at Refco (including the LBO, Bond Offering, and IPO) were handled by Mayer Brown and billed through Collins. This unquestionably gave Mayer Brown and Collins the opportunity to commit fraud by structuring the sham transactions alleged herein, and by drafting, reviewing, and commenting upon the Company's public disclosures.

714. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) also possessed a strong motive to participate in the fraudulent scheme in order to ensure that Bennett and Refco continued to direct a steady flow of lucrative legal work to Mayer Brown. Refco was one of Mayer Brown's largest clients, accounting for approximately $5 million in billings per year. This amount represented approximately half the total amount of billings for which Collins was responsible at the firm. Mayer Brown, Collins, and other Mayer Brown attorneys knew that if they disclosed the fraud taking place at Refco, the Company would collapse and the river of fees Refco provided to them would dry up. Moreover, if the scheme was revealed at any point after Mayer Brown had worked with Refco in transferring its debts to RGHI or in documenting the round-trip transactions, Mayer Brown, Collins, and other Mayer Brown employees would face certain liability for their role (as has proved to be the case). Thus, they were motivated to perpetuate the fraudulent scheme to cover up their involvement. Further, Collins was motivated to participate in the scheme in order to retain and/or increase his salary, bonus and position as an influential partner at Mayer Brown.

2. Knowledge and/or reckless disregard of the fraud

715. Mayer Brown, Collins, and other attorneys employed by Mayer Brown, including Koury and Monk, acted with scienter with respect to the fraudulent scheme and the materially false and misleading statements discussed herein, in that they had actual knowledge that the

fraudulent scheme lacked any proper business purpose and was a sham designed solely to allow Refco to issue materially false and misleading financial statements and make other materially false and misleading public statements.

716. As described above, there is abundant direct evidence that Collins and Mayer Brown were knowing and key participants in nearly every aspect of the fraudulent scheme, from the very first efforts by Refco to transfer uncollectible debts to RGHI, through the many years-long cover-up that Collins and Mayer Brown orchestrated and documented through the sham related-party loan transactions.

717. As described above, Collins and Mayer Brown participated with Bennett and others in orchestrating one of the very first steps of the fraudulent scheme by negotiating, designing, and drafting the documentation for a plan to transfer the uncollectible Niederhoffer debts off the books of Refco and convert them into a sham receivable purportedly owed by RGHI. These activities involved Collins as well as a number of other attorneys employed by Mayer Brown, including Monk. Mayer Brown, Collins, and other Mayer Brown attorneys who participated in these activities (including Monk) knew or recklessly disregarded that the scheme to transfer these uncollectible receivables from Refco to RGHI was a blatant fraud. There was no conceivably valid business purpose for RGHI—which Collins, Monk and Mayer Brown knew was a shell entity that was controlled by Bennett and had no operational component—to agree to pay Refco $71 million for the "right" to collect on the Niederhoffer debt. This was particularly true since ***Mayer Brown, through Collins, negotiated and drafted the documents whereby Refco reduced the value of that "right" to zero by releasing the right to pursue Niederhoffer to repay that debt.*** Thus, Collins and Mayer Brown knew that the so-called "right" to collect on the

Niederhoffer debt was worthless, and the sole purpose for RGHI's "paying" for this debt was so Refco could avoid writing it off in accordance with applicable accounting rules and regulations.

718. Moreover, Mayer Brown, Collins, and other Mayer Brown attorneys (including Koury and Monk) knew of the existence and increasing amount of the RGHI receivable to Refco. The same general process used to shuffle the Niederhoffer debt off Refco's books was also used to transfer hundreds of millions of dollars of additional uncollectible debt to RGHI. As discussed above, by no later than October 1999, Collins and Mayer Brown knew that the Niederhoffer debt was not the only so-called "receivable" that RGHI owed to Refco. Indeed, on or about October 15, 1999, Collins recorded in his own handwriting that RGHI's net worth was represented by the value of its investment in Refco ***"Minus Loans to RGH[I]."*** This handwritten note demonstrates that Collins knew that RGHI owed money to Refco, and Collins' use of the plural "loans" compels the conclusion that he was aware of more than just the Niederhoffer bad debts that he himself helped Refco transfer to RGHI.

719. By June 2002, as discussed above, Collins and Mayer Brown had direct knowledge that the RGHI receivable totaled at least $350 million. Indeed, it appears that Collins himself inserted language into a purchase agreement that Mayer Brown drafted, which acknowledged the existence of a $350 million "inter-company debt of Refco Group Holdings, Inc."

720. The knowledge of, and direct participation in, the fraudulent scheme by Mayer Brown, Collins, and other Mayer Brown employees is further confirmed by their well-documented involvement in the fraudulent round-trip loan transactions, *i.e.*, the "cover-up." Mayer Brown attorneys drafted all of the documentation for seventeen of those transactions and had a thorough understanding of the nature, timing and purpose of those transactions. In

particular, Mayer Brown, Collins, and the other Mayer Brown employees who participated in the documentation of these transactions (including Koury and Monk) knew or recklessly disregarded that these fraudulent transactions were designed solely to conceal the existence of the RGHI receivable.

721. The Examiner concluded that "there is evidence showing that Mayer Brown knew that the Round Trip Loans were a scheme to avoid disclosure of the RGHI Receivable on Refco's audited financial statements in order to fraudulently bolster Refco's financial appearance to lenders and investors." The Examiner concluded that the features of the transactions indicate that the round trip loans "had no legitimate business purpose" and were "uncollateralized short-term, back-to-back loans involving the lending of hundreds of millions of dollars by one Refco entity through a third party to another Refco entity, with guarantees and indemnities by [Refco] to eliminate any risk to the third party. Thus, the transactions appeared to lack any economic substance . . . [and] appear suspicious on their face." Moreover, the Examiner's Report noted that none of the Mayer Brown witnesses interviewed by the Examiner could articulate any legitimate business purpose for the round trip loans.

XIV. LOSS CAUSATION

722. Throughout the Class Period, the prices of the Company's securities were artificially inflated as a direct result of Defendants' misrepresentations and omissions regarding the Company, including the misrepresentations about its financial condition and results of operations.

723. The Company's financial condition and results, including the collectibility of its receivables and the nature and extent of its transactions with related parties, were material information to Plaintiffs and the other members of the Class. Had the truth been disclosed to the market at or before the time of the Bond Offering or the IPO, Plaintiffs and the other Class

members would have been unwilling to purchase the Company's securities, and the Company would have been unable to complete those offerings.

724. When the truth about the Company was revealed, the inflation that had been caused by Defendants' misrepresentations and omissions was eliminated from the price of the Company's securities, causing significant losses to Plaintiffs and the other Class members. The October 10, 2005 disclosure of a $420 million related-party loan to RGHI, and that the Company's prior financial statements could not be relied upon, was a partial disclosure of the misrepresentation and omissions, and led to a flurry of trading in which Refco's stock price plunged 45%, from its $28.56 close on October 7, 2005 to its $15.60 close on October 10. The stock price continued its freefall in the ensuing days, dropping 11% to close at $13.85 on October 11, 2005 following the announcement that the SEC had launched an investigation of Refco, and falling another 22% to close at $10.85 on October 12, 2005 upon news of Bennett's arrest on securities fraud charges. As customers ran for the exits amidst the growing uncertainty caused by the revelation of Defendants' misrepresentations and omissions, Refco was forced to shut down its Refco Capital Markets unit on October 13, whereupon the stock dropped another 27% to $7.90 before trading was halted by the New York Stock Exchange. Similarly, the Bonds – which were trading at 108.625% of par on October 7, 2005 and had never traded below 103% of par in the preceding twelve months – fell to 91.50% on October 11; approximately 76% on October 12; and as low as 16% by October 14, 2005. By October 17, 2005, merely one week after the initial revelation of the previously-undisclosed $420 million loan to Bennett, Refco announced that it was filing for bankruptcy. Following that announcement, the truth was finally revealed to the market, and Refco's stock fell to a price of approximately 65 cents, nearly a 98% decline.

725. The declines in the Company's securities prices following the revelations of October 11-17, 2005 and the resulting losses suffered by Plaintiffs and the other members of the Class are directly attributable to the market's reaction to the disclosure of information that had previously been misrepresented or concealed by Defendants, and to the market's adjustment of the Company's securities prices to reflect the newly emerging truth about the Company's financial condition.

726. Defendants' conduct, as alleged herein, proximately caused foreseeable losses to Plaintiffs and the other members of the Class.

XV. INAPPLICABILITY OF THE STATUTORY SAFE HARBOR

727. The statutory safe harbor applicable to forward-looking statements under certain circumstances does not apply to any of the false or misleading statements pleaded in this Complaint. First, the statutory safe harbor does not apply to false or misleading statements that are made in connection with an initial public offering (such as the Bond Offering and the IPO) and/or are contained in financial statements which purport to have been prepared in accordance with GAAP. Second, the statements complained of were not forward-looking statements nor were they identified as forward-looking statements when made. Rather, the false or misleading statements complained of in this Complaint concerned historical and/or current facts and conditions existing at the time the statements were made.

728. To the extent that any of the false or misleading statements alleged herein can be construed as forward-looking statements, they were not accompanied by any meaningful cautionary language identifying important facts that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent the statutory safe harbor would otherwise apply to any forward-looking statements pleaded herein, Defendants are liable for those false or misleading forward-looking statements because at the

time each of those statements was made, the speaker(s) knew the statement was false or misleading, or the statement was authorized and/or approved by an executive officer of Refco or of a Defendant who knew that the statement was materially false or misleading when made.

XVI. PRESUMPTION OF RELIANCE

A. Reliance Should Be Presumed With Respect to Defendants' Omissions

729. Throughout the Class Period, Plaintiffs and the members of the Class justifiably expected the Defendants to disclose material information in connection with the offering and sale of the Company's securities, including in the Offering Memorandum for the Bonds, the Bond Registration Statement, the 2005 10-K, the First Quarter 2006 10-Q and the IPO Registration Statement and Prospectus. Plaintiffs and the members of the Class would not have purchased the Company's securities at artificially inflated prices if Defendants had disclosed all material information, including the nature and magnitude of its uncollectible receivables and the undisclosed related-party transactions. Thus, reliance by Plaintiffs and the Class members should be presumed with respect to Defendants' omissions of material information.

B. Reliance Upon the Offering Memorandum and Road Show Should Be Presumed For All Purchasers of 144A Bonds in the Initial Offering

730. The Offering Memorandum for the Bonds instructed: "You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different." Thus, in connection with their decisions to purchase 144A Bonds in the Bond Offering, investors relied heavily on the Offering Memorandum and the financial and other information contained therein, and the information and documentation provided at the Bond Road Show (which was consistent with the information in the Offering Memorandum). Because the Company instructed investors to rely on

that information, such reliance should be presumed for all investors who purchased 144A Bonds in the initial offering.

731. Moreover, the pricing of the 144A Bonds in the Bond Offering was determined by the Company and the Bond Underwriters, in large part based upon institutional investors' input and indications of interest following the Road Show and their review of the Offering Memoranda. The pricing of the 144A Bonds was also influenced by the ratings given to the 144A Bonds by the ratings agencies, after the Bond Underwriter Defendants, the THL Defendants and Refco presented them with substantially the same information as was presented to investors in the Bond Offering Memorandum and at the Road Show. Had truthful and accurate information been provided to the ratings agencies and to investors in the lead-up to the Bond Offering, the 144A Bond ratings would have been lower and investors in the 144A Bonds – all of whom were sophisticated investors – would have been unwilling to accept the pricing and terms at which the 144A Bonds were ultimately issued. The initial offering price of the 144A Bonds was, therefore, the product of numerous sophisticated institutions' evaluation of the information provided in the Offering Memorandum and at the Road Show, and reliance upon that information should be presumed for all initial offering purchasers of 144A Bonds.

C. Reliance Should Be Presumed Because Fraud Created the Market for the Company's Securities

732. As alleged herein, in connection with the offer and sale of the Bonds and the Refco stock, certain Defendants entered into and participated in a scheme to employ devices, schemes, and artifices to defraud, and to engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon Plaintiffs and the other members of the Class. This scheme included the offering and sale of the Bonds and Refco stock based on materially misleading information, and without disclosing material facts.

733. The information contained in the Offering Memorandum and disseminated at the Bond Road Show was materially false, as alleged herein. Had truthful and complete information been provided to potential investors at the time of the Bond Offering, and had investors known that Refco had been engaging in repeated round-trip transactions at the end of each fiscal year since 1999 in order to conceal the existence of hundreds of millions of dollars in uncollectible receivables, there would have been no market for the Bonds. Likewise, had Refco's true financial picture been disclosed to investors at the time of the Bond Offering, investors would have known that the credit risk associated with the Bonds was substantially greater than they otherwise believed, and Refco would have been in violation of the restrictive covenants of its loan agreements. Moreover, Refco and/or its subsidiaries likely would have been in violation of the CFTC's minimum net capital requirements and/or other regulatory capital requirements, thereby precluding Refco from conducting a primary line of business and threatening the Company's very existence. As Refco acknowledged in the Offering Memorandum itself: "Our failure to maintain the required net capital could result in suspension or revocation of our registration by the SEC and our suspension or expulsion by the NASD, and could ultimately lead to our liquidation." The Bond Registration Statement similarly stated: "***If we do not maintain the capital levels required by regulations, we may be fined or barred from conducting business.***" (Emphasis in original.) Accordingly, if the Company's true financial condition were disclosed at the time of the Bond Offering, there would have been no market for the Bonds.

734. Similarly, had truthful and complete information been provided to potential investors at the time of the IPO, and had the fraudulent scheme alleged herein not occurred, investors would have known that the Company's financial condition was materially weaker than was represented, Refco would have been in violation of its debt covenants, and Refco and/or its

subsidiaries would likely have been in violation of the CFTC's minimum net capital requirements and/or other regulatory capital requirements, thereby precluding Refco from conducting a primary line of business and threatening the Company's very existence. Under these circumstances, there would have been no market for the Company's stock.

735. The scheme described herein was intended to, and did, bring the Bonds and the Refco stock into the market fraudulently. Thus, the fraud alleged herein created a market for the Bonds and the Refco stock which would not otherwise have existed. Absent the fraud, there would have been no Bond Offering, no Exchange Offer, and no IPO. [REDACTED]

736. When purchasing the Company's securities in the Bond Offering, in the IPO, and in the secondary market, Plaintiffs and the Class members reasonably relied on the availability of those securities in the market as an indication of their genuineness. Plaintiffs and the Class members relied on the integrity of the market to furnish securities that were not the product of a fraudulent scheme. Thus, the reliance of Plaintiffs and the Class members on Defendants' fraudulent scheme, including their misstatements and omissions, should be presumed.

D. Reliance Should Be Presumed Under the Fraud-on-the-Market Doctrine

737. Throughout the Class Period, the Company's securities traded in an efficient market that promptly digested current information with respect to the Company from all publicly-available sources and reflected such information in the prices of the Company's securities.

738. Immediately after the Bond Offering, a secondary market developed for trading of the 144A Bonds, which traded in the PORTAL market and among dealers in the Over-the-Counter market. The market for the 144A Bonds consisted exclusively of institutional investors and other sophisticated investors, known as Qualified Institutional Buyers or QIBs. These institutional investors employed professional securities analysts who read and analyzed all relevant and publicly available information regarding the Company and the Bonds, and promptly adjusted the prices at which they were willing to buy and sell the Bonds accordingly. There was extensive trading activity in the secondary market for the 144A Bonds between August 5, 2004 and May 10, 2005, as demonstrated by the fact that the average weekly trading volume as a percentage of the face value of the 144A Bonds was approximately 2%. Furthermore, the estimated average bid-ask spread for the 144A Bonds was relatively low and was within a range that is indicative of market efficiency.

739. The secondary market for the Bonds broadened with the issuance of the Registered Bonds in April 2005, which were freely tradeable in the public markets. At all relevant times, major brokerage houses such as Credit Suisse, Bank of America, Deutsche Bank, Bank of New York, Morgan Stanley Dean Witter, Citigroup Capital Markets, Inc., and J.P. Morgan Chase Bank served as market makers and/or dealers in the Bonds, and information regarding the prices at which the 144A Bonds and Registered Bonds were trading was publicly available through pricing services including the NASD's Trade Reporting and Compliance Engine (TRACE). There was extensive trading activity in the secondary market for the Registered Bonds between May 11, 2005 and October 7, 2005, as demonstrated by the fact that the average weekly trading volume as a percentage of the face value of the Registered Bonds was in excess of 1%, and close to 2%. Furthermore, the estimated average bid-ask spread for the

Registered Bonds was relatively low and was within a range that is indicative of market efficiency.

740. At all times after the Bond Offering, the Company was consistently followed by securities analysts from Moody's and S&P – who published credit ratings on the Bonds. In addition, the business press frequently reported information about the Company. During this period, Refco and the Defendants continued to pump materially false information into the marketplace regarding the financial condition of the Company. This information was promptly reviewed and analyzed by the ratings agencies, analysts, and institutional investors; assimilated into the ratings agencies' ratings for the Bonds and into analysts' and investors' analysis of the creditworthiness and the probability of default of the Bonds; and reflected in the market price of the Bonds.

741. The market for Refco's common stock was an efficient market as well, characterized by active trading and significant institutional ownership. [redacted]

742. From the time of the IPO until October 7, 2005:

(a) Refco's stock was actively traded on the New York Stock Exchange;

(b) The market price of Refco's stock reacted promptly to the public dissemination of new or unexpected information regarding the Company, including rapid and statistically significant reactions to significant unexpected disclosures;

(c) There were at least five securities analysts who followed and published research reports regarding Refco that were publicly available to investors, including analysts from BAS; Goldman Sachs; Credit Suisse; Weeden & Co.; and Sandler O'Neill;

(d) The average weekly trading volume for Refco's stock from August 12, 2005 through October 7, 2005 was over 3.2 million shares, or 2.5% of total outstanding shares, and in fact from August 12, 2005 through October 7, 2005 the weekly trading volume exceeded 1% of the total outstanding shares every week, while exceeding 2% in all but two weeks;

(e) The Company's market capitalization was in excess of $3 billion;

(f) Large and sophisticated institutions owned large blocks of Refco common stock (including, among others, Fidelity, Barclays, T. Rowe Price, Wellington Management Company, TIAA-CREF, and Oppenheimer Funds), with over 60% of the IPO shares having been allocated to the top 50 institutional shareholders in the United States; and

(g) There was active trading of short common stock positions, as well as active trading of option contracts, demonstrating interest and participation by sophisticated investors and arbitrageurs.

(h) The average bid-ask spread for Refco's stock was relatively low and was within a range that is indicative of market efficiency.

743. From October 7, 2005 through the end of the Class Period on October 17, 2005, the market for Refco's securities remained efficient, as the trading prices of the Company's securities continued to reflect all publicly available information, including the partial disclosures

of the fraud. The indicia of market efficiency discussed above remained present during this time period.

744. Plaintiffs and the other Class members relied on the integrity of the market price for the Company's securities and are entitled to a presumption of reliance on Defendants' material misrepresentations and omissions during the Class Period.

XVII. CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT

COUNT NINE

For Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder, On Behalf of Plaintiffs and All Members of the Class, Against the Officer Defendants, the Audit Committee Defendants, Trosten, the THL Defendants, Mayer Brown, Collins, and Grant Thornton

745. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

746. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder, on behalf of Plaintiffs and all other members of the Class, against Defendants Bennett, Trosten, Murphy, Sherer (with respect to statements and omissions made after he joined Refco in January 2005), Maggio, Sexton, Klejna, Silverman, O'Kelley, Gantcher, Breitman, Lee, Harkins, Jaeckel, Schoen, the THL Partner Defendants, Mayer Brown, Collins, and Grant Thornton (collectively, the "Section 10b-5(b) Defendants").

747. As alleged herein, throughout the Class Period, the Company and the Section 10b-5(b) Defendants, individually and in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, the mails and/or the facilities of a national securities exchange, made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder. Among other things, the Offering

Memorandum, the slides for the Bond Road Show, the Bond Registration Statement, the Forms 10-K and 10-K/A, the IPO Registration Statement, and other SEC filings and press releases by Refco all contained materially false and misleading statements of fact as detailed above.

748. The Company's and the Section 10b-5(b) Defendants' false and misleading statements and omissions were intended to and did, as alleged herein, (i) deceive the investing public, including Plaintiffs and the other members of the Class; (ii) artificially create, inflate and maintain the market for and market price of the Company's securities; and (iii) cause Plaintiffs and the other members of the Class to purchase the Company's securities at inflated prices.

749. The Company and the Section 10b-5(b) Defendants were each individually and collectively responsible for making one or more of the statements and omissions alleged herein, by virtue of having made false or misleading verbal statements during the Bond Road Show, or by virtue of having prepared, reviewed, commented on, approved, signed, and/or disseminated documents which contained untrue statements of material fact and/or omitted facts necessary to make the statements therein not misleading. Additionally, Mayer Brown was identified in the Offering Memorandum and the IPO Registration Statement as Refco's counsel, and readers of those documents understood that Mayer Brown was involved in the preparation and review of those documents.

750. Mayer Brown and the THL Partner Defendants are each responsible for not only their own acts, but also the acts of all of their partners and employees who violated Section 10(b) and Rule 10b-5(a) and (c), under principles of *respondeat superior*. The acts alleged herein by Collins, Koury, and Monk and other Mayer Brown partners and employees were undertaken by those individuals as agents of Mayer Brown, were within the scope of their agency, and were calculated to facilitate or promote Mayer Brown's business. Likewise, the acts alleged herein by

the THL Individual Defendants and other officers and employees of the THL Partner Defendants were undertaken by those individuals as agents of the THL Partner Defendants, were within the scope of their agency, and were calculated to facilitate or promote the THL Partner Defendants' business.

751. As described above, the Company and the Section 10b-5(b) Defendants made the false statements and omissions knowingly and intentionally, or in such an extremely reckless manner as to constitute willful deceit and fraud upon Plaintiffs and other members of the Class who purchased Refco securities during the Class Period.

752. The Company's and the Section 10b-5(b) Defendants' false statements and omissions were made in connection with the purchase or sale of the Company's securities.

753. In ignorance of the false and misleading nature of the Company's and the Section 10b-5(b) Defendants' statements and omissions, and relying directly or indirectly on those statements and/or upon the integrity of the market price for Refco securities, Plaintiffs and the other members of the Class purchased Refco securities at artificially inflated prices during the Class Period. But for the fraud, they would not have purchased the securities at artificially inflated prices.

754. The market price for Refco securities declined materially upon the public disclosure of the facts that had previously been misrepresented or omitted by the Section 10b-5(b) Defendants, as described above.

755. Plaintiffs and the other members of the Class were substantially damaged as a direct and proximate result of their purchases of Refco securities at artificially inflated prices and the subsequent decline in the price of those securities when the truth was disclosed.

COUNT TEN

For Violations of Section 10(b) of the Exchange Act, and Rule 10b-5(a) and (c) Promulgated Thereunder, On Behalf of Lead Plaintiffs and All Members of the Class, Against RGHI

756. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

757. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) promulgated thereunder, on behalf of Plaintiffs and all other members of the Class against RGHI.

758. As alleged herein, throughout the Class Period, Bennett, the Company, RGHI and others, individually and in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, the mails and/or the facilities of a national securities exchange, carried out a plan, scheme and course of conduct described at length above which was intended to and did: (i) deceive the investing public, including Plaintiffs and the other members of the Class; (ii) artificially create, inflate and maintain the market for, and market prices of, Refco securities; and (iii) cause Plaintiffs and the other members of the Class to purchase Refco securities at artificially inflated prices. In furtherance of this unlawful plan, scheme and course of conduct, the Company and RGHI took the actions described at length above.

759. As described above, the Company and Defendant Bennett engaged in the fraudulent activity described herein knowingly and intentionally, or in such an extremely reckless manner as to constitute willful deceit and fraud upon Plaintiffs and the other members of the Class who purchased Refco securities during the Class Period. The knowledge and scienter of Defendant Bennett, as the sole stockholder and CEO of RGHI, are imputed to RGHI. Moreover, as a party to the sham transactions alleged herein, with knowledge (through Bennett) that the purpose and effect of those transactions was to manipulate and materially misstate

Refco's reported financial condition, RGHI acted with scienter and is subject to liability under Section 10(b) and Rule 10b-5(a) and (c).

760. The Company's and RGHI's fraudulent activities occurred in connection with the purchase or sale of the Company's securities.

761. In ignorance of the Company's and RGHI's fraudulent conduct, and relying directly or indirectly on the integrity of the market price for Refco securities, Plaintiffs and the other members of the Class purchased Refco securities at artificially inflated prices during the Class Period. But for the fraud, they would not have purchased the securities at artificially inflated prices.

762. The market prices for Refco securities declined materially upon the public disclosure of the true facts regarding the fraud perpetrated by the Company and RGHI, as described above.

763. Plaintiffs and the other members of the Class were substantially damaged as a direct and proximate result of their purchases of Refco securities at artificially inflated prices and the subsequent decline in the price of those securities when the truth was disclosed.

COUNT ELEVEN

Pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) Promulgated Thereunder, on Behalf of Plaintiffs and all Class Members Against Mayer Brown and Collins

764. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

765. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) promulgated thereunder, on behalf of Plaintiffs and all other members of the Class against Collins and Mayer Brown.

766. As alleged herein, throughout the Class Period, Collins and Mayer Brown, and others, including but not limited to Koury, Monk and other partners and employees of Mayer Brown, in concert, directly and indirectly, by the use of the means or instrumentalities of interstate commerce, the mails and/or the facilities of a national securities exchange, orchestrated and carried out a plan, scheme and course of conduct described at length above which was intended to and did: (i) deceive the investing public, including Plaintiffs and the other members of the Class; (ii) artificially create, inflate and maintain the market for, and market prices of, Refco securities; and (iii) cause Plaintiffs and the other members of the Class to purchase Refco securities at artificially inflated prices. In furtherance of this unlawful plan, scheme and course of conduct, Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown took the actions described at length above, including designing and implementing sham transactions used by Refco to fraudulently transfer uncollectible debt and designing and participating in blatantly fraudulent sham loan transactions designed to conceal the uncollectible debt and manipulate Refco's reported financial results while at the same time allowing Mayer Brown to be publicly identified as counsel to Refco. As described above, these "loan" transactions were shams that served no legitimate business purpose and, as Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown knew or recklessly disregarded, they were designed solely for the purpose of furthering the fraudulent scheme described herein.

767. As described above, Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown engaged in the manipulative and deceptive acts described herein in furtherance of the scheme to materially misstate Refco's financial statements. They directly participated in this scheme knowingly and intentionally or in such an extremely reckless manner

as to constitute willful deceit and fraud upon Plaintiffs and the other members of the Class who purchased Refco securities during the Class Period.

768. Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown acted with scienter and violated Section 10(b) and Rule 10b-5(a) and (c) in that they participated in the design, negotiation and documentation of the sham transactions alleged herein with knowledge and/or recklessly disregarding that the purpose and effect of those transactions was to manipulate and materially misstate Refco's reported financial condition.

769. Mayer Brown is responsible for not only its own acts, but also the acts of all of its partners and employees who violated Section 10(b) and Rule 10b-5(a) and (c), including without limitation Collins, Koury, and Monk, under principles of *respondeat superior*. The acts alleged herein by Collins, Koury, and Monk and other Mayer Brown partners and employees were undertaken by those individuals as agents of Mayer Brown, were within the scope of their agency, and were calculated to facilitate or promote Mayer Brown's business.

770. The fraudulent activities of Collins, Mayer Brown, Koury, Monk, and other employees and partners of Mayer Brown occurred in connection with the purchase or sale of the Company's securities.

771. In ignorance of the fraudulent conduct of Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown, and relying directly or indirectly on the integrity of the market price for Refco securities, Plaintiffs and the other members of the Class purchased Refco securities at artificially inflated prices during the Class Period. But for the fraud, they would not have purchased the securities at artificially inflated prices.

772. The market prices for Refco securities declined materially upon the public disclosure of the true facts regarding the fraud perpetrated by Collins, Mayer Brown, Koury, Monk, and others, as described above.

773. Plaintiffs and the other members of the Class were substantially damaged as a direct and proximate result of their purchases of Refco securities at artificially inflated prices and the subsequent decline in the price of those securities when the truth was disclosed.

COUNT TWELVE

Control Person Liability Pursuant to Section 20(a) of the Exchange Act, On Behalf of Purchasers of 144A Bonds in the Bond Offering, Against Bennett, Grant, RGHI, the THL Partner Defendants, Lee, Murphy, Trosten, Sexton, Silverman, and Maggio (Based on Violations of Section 10(b) and Rule 10b-5 by Refco Group, Refco Finance Holdings, and Refco Finance)

774. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

775. This Claim is brought pursuant to Section 20(a) of the Exchange Act against Defendants Bennett, Grant, RGHI, the THL Partner Defendants, Lee, Murphy, Trosten, Sexton, Silverman, and Maggio (collectively, the "Section 20(a) Bond Offering Defendants"), on behalf of PIMCO, the PIMCO High Yield Fund, and the other members of the Class who purchased 144A Bonds in the Bond Offering.

776. As alleged herein, Refco Group, Refco Finance Holdings, and Refco Finance violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by making false and misleading statements in connection with the purchase or sale of securities and by participating in a fraudulent scheme and course of business or conduct, all in connection with the Bond Offering. This fraudulent conduct was undertaken with scienter because Refco Group, Refco Finance Holdings, and Refco Finance are charged with the knowledge and scienter of

Defendant Bennett and others who knew of or recklessly disregarded the falsity of the Company's statements and of the fraudulent nature of its scheme. But for the fact that Refco Group, Refco Finance Holdings, and Refco Finance have filed for bankruptcy protection, they would be named as defendants on the Section 10(b) claims alleged herein.

777. PIMCO, the PIMCO High Yield Fund, and the other members of the Class who purchased 144A Bonds in the Bond Offering suffered damages in connection with their purchases of those securities, as a direct and proximate result of the violations of Section 10(b) and Rule 10b-5 by Refco Group, Refco Finance Holdings, and Refco Finance.

778. The THL Partner Defendants were controlling persons of Refco Group at the time of the Bond Offering due (among other reasons alleged herein) to their approximate 57% ownership interest in New Refco, the sole member of Refco Group.

779. Defendant Lee was a controlling person of Refco Group at the time of the Bond Offering due (among other reasons alleged herein) to his position as Chairman and CEO of Thomas H. Lee Partners, and the fact that Thomas H. Lee Partners or Lee controlled each of the other THL Partner Defendants, which in turn controlled Refco Group.

780. Defendants Bennett and Grant were controlling persons of Refco Group at the time of the Bond Offering due (among other reasons alleged herein) to their approximate 43% ownership interest (through their ownership of RGHI) in New Refco, the sole member of Refco Group.

781. Defendant RGHI was a controlling person of Refco Group at the time of the Bond Offering due (among other reasons alleged herein) to its approximate 43% ownership interest in New Refco, the sole member of Refco Group.

782. Defendants Bennett, Murphy, Trosten, Sexton, Silverman and Maggio were controlling persons of Refco Group, Refco Finance Holdings, and Refco Finance at the time of the Bond Offering due (among other reasons alleged herein) to their executive positions with Refco Group and Refco Finance Holdings (of which Refco Finance was a wholly-owned subsidiary at the time of the Bond Offering); their direct involvement in the day-to-day business and operations of each entity, including the preparation of their financial statements; their participation in the Bond Road Show where the Bonds were marketed to investors and the contents of the prospectus were discussed; and/or their participation in the preparation and dissemination of the false and misleading prospectus for the Bonds.

783. By virtue of the foregoing, the Section 20(a) Bond Offering Defendants each had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco Group, Refco Finance Holdings, and Refco Finance, including the content and dissemination of their financial statements and Offering Memorandum.

784. The Section 20(a) Bond Offering Defendants did not act in good faith in connection with the conduct at issue in this Claim. Further, these defendants directly or indirectly induced the act or acts constituting the violations of Section 10(b) and Rule 10b-5 by Refco Group, Refco Finance Holdings, and Refco Finance by, among other things, orchestrating the sham transactions that caused the Company's financial statements to be materially misstated, approving and assisting in the preparation of the Offering Memorandum, and/or participating in the Bond Road Show where false statements were made to investors.

785. The Section 20(a) Bond Offering Defendants are culpable for participation in the matters alleged herein, because they acted with knowledge that the Company's public statements were materially false or misleading, or omitted material information, or they acted with reckless

disregard for the truth. Facts giving rise to a strong inference of Defendant Grant's culpability include: (1) that, upon information and belief, he continued to play a significant role in the management of the Company, despite leaving the Company, through the date of the Bond Offering; (2) that he received substantial proceeds from the LBO, which could not have occurred absent the Bond Offering; and (3) his indictment on criminal charges of securities fraud and conspiracy to commit securities fraud in connection with the Bond Offering. Upon information and belief, Grant and Bennett shared equally in the THL Partner Defendants' $507 million cash payment to RGHI; Refco Group's transfer of $550 million in cash plus equity interests valued at $231 million to RGHI; plus an additional $12 million in cash and $108 million in debt forgiveness. The facts giving rise to a strong inference of the other Section 20(a) Bond Offering Defendants' culpability are alleged in detail above.

786. By virtue of their positions as controlling persons of Refco Group, Refco Finance Holdings, and Refco Finance and their culpable participation in those entities' violations of Section 10(b) in connection with the Bond Offering, the Section 20(a) Bond Offering Defendants are each jointly and severally liable for those violations pursuant to Section 20(a) of the Exchange Act, with and to the same extent as Refco Group, Refco Finance Holdings, and Refco Finance.

COUNT THIRTEEN

Control Person Liability Pursuant to Section 20(a) of the Exchange Act, On Behalf of Purchasers of Bonds After the Bond Offering and Before the Date of the IPO, Against the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Trosten, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman (Based on Violations of Section 10(b) and Rule 10b-5 By Refco Group)

787. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

788. This Claim is brought pursuant to Section 20(a) of the Exchange Act against the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Trosten, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman (collectively, the "Section 20(a) Pre-IPO Defendants"), on behalf of PIMCO, the PIMCO High Yield Fund, and the other members of the Class who purchased Bonds after the Bond Offering but prior to the IPO.

789. As alleged herein, Refco Group violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by making false and misleading statements in connection with the purchase or sale of securities and by participating in a fraudulent scheme and course of business or conduct, during the period between the Bond Offering and the IPO. This conduct was undertaken with scienter, because Refco Group is charged with the knowledge and scienter of Defendant Bennett and others who knew of or recklessly disregarded the falsity of the Company's statements and of the fraudulent nature of its scheme. But for the fact that Refco has filed for bankruptcy protection, it would be named as a defendant on the Section 10(b) claims alleged herein.

790. PIMCO, the PIMCO High Yield Fund, and the other members of the Class who purchased Bonds after the Bond Offering but prior to the IPO suffered damages in connection with their purchases of those securities, as a direct and proximate result of Refco Group's violations of Section 10(b) and Rule 10b-5.

791. The THL Defendants were controlling persons of Refco Group from the completion of the Bond Offering until the date of the IPO, due (among other reasons alleged herein) to an approximate 57% ownership interest in New Refco, the sole member of Refco Group, and the THL Individual Defendants' service on New Refco's Board of Managers.

792. Defendant Bennett was a controlling person of Refco Group from the completion of the Bond Offering until the date of the IPO, due (among other reasons alleged herein) to his 43% ownership interest (through RGHI and/or the Bennett Trust) in New Refco, the sole member of Refco Group.

793. Defendant RGHI was a controlling person of Refco Group from the completion of the Bond Offering until the date of the IPO, due (among other reasons alleged herein) to its ownership interest in New Refco, the sole member of Refco Group. From the completion of the Bond Offering until the fiscal quarter ended February 28, 2005, RGHI owned approximately 43% of New Refco. During the fiscal quarter ended February 28, 2005, RGHI transferred approximately 40% of its equity interests in New Refco to the Bennett Trust, and thereafter owned approximately 26% of New Refco.

794. Defendant Bennett Trust was a controlling person of Refco Group from the fiscal quarter ended February 28, 2005 through the date of the IPO, due to its ownership of approximately 17% of New Refco, the sole member of Refco Group.

795. Defendants Bennett, Murphy, Sexton, Silverman, Maggio, and Klejna were controlling persons of Refco Group from the completion of the Bond Offering until the date of the IPO, due (among other reasons alleged herein) to their executive positions with Refco Group; their direct involvement in its day-to-day operations, including its financial reporting and accounting functions; and their signatures on and participation in the preparation and/or dissemination of the Bond Registration Statement and other public statements by Refco Group.

796. Defendant Trosten was a controlling person of Refco Group from the completion of the Bond Offering until his resignation in October 2004, due (among other reasons alleged herein) to his executive positions with Refco Group; his direct involvement in its day-to-day

operations, including his direct responsibility for its financial reporting and accounting functions; and his participation in the preparation and/or dissemination of public statements by Refco Group.

797. Defendant Sherer was a controlling person of Refco Group from the time he joined the Company in January 2005 until the date of the IPO, due (among other reasons alleged herein) to his executive positions with Refco Group; his direct involvement in its day-to-day operations including his direct responsibility for its financial reporting and accounting functions; and his participation in the preparation and/or dissemination of the Bond Registration Statement and other public statements by Refco Group.

798. Defendants O'Kelley, Gantcher and Breitman were controlling persons of Refco Group from the completion of the initial offering of the Bonds until the date of the IPO, due (among other reasons alleged herein) to their service on the Audit Committee of New Refco, which also performed the functions of an audit committee for Refco Group. As members of the Audit Committee, these defendants were responsible for: overseeing Refco Group's financial reporting, accounting, and internal controls; overseeing the activities of Refco Group's outside auditors and reviewing the scope and results of those audits with the auditors; meeting with and making recommendations to the managers of Refco Group concerning the foregoing activities; and approving the false and misleading financial statements and other public statements as referenced herein.

799. By virtue of the foregoing, each of the Section 20(a) Pre-IPO Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco Group, including the content and dissemination of its financial statements and

registration statements, from the date of the completion of the initial offering of the Bonds until the date of the IPO.

800. The Section 20(a) Pre-IPO Defendants did not act in good faith in connection with the conduct at issue in this Claim. Further, each of these defendants directly or indirectly induced the act or acts constituting Refco Group's violations of the Exchange Act by, among other things, orchestrating the sham transactions that caused the Company's financial statements to be materially misstated, and/or signing and/or approving the false and misleading statements that were issued by Refco Group.

801. The Section 20(a) Pre-IPO Defendants are culpable for participation in the matters alleged herein, because they acted with knowledge that Refco Group's public statements were materially false or misleading, or knowingly omitted material information, or they acted with reckless disregard for the truth.

802. Facts giving rise to the Section 20(a) Pre-IPO Defendants' culpability are alleged in detail above.

803. By virtue of their positions as controlling persons of Refco Group and their culpable participation in Refco Group's violations of Section 10(b) and Rule 10b-5 in connection with the purchase or sale of securities after the completion of the initial offering of Bonds and before the IPO, the Section 20(a) Pre-IPO Defendants are each jointly and severally liable for those violations pursuant to Section 20(a) of the Exchange Act, with and to the same extent as Refco Group.

COUNT FOURTEEN

**Control Person Liability Pursuant to Section 20(a) of the Exchange Act,
On Behalf of Purchasers of Bonds and/or Refco Common Stock
On and After the Date of the IPO, Against the
THL Defendants and Defendants Bennett, RGHI, the
Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna,
O'Kelley, Gantcher, and Breitman
(Based on Violations of Section 10(b) and Rule 10b-5 By Refco)**

804. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

805. This Claim is brought pursuant to Section 20(a) of the Exchange Act against the THL Defendants and Defendants Bennett, RGHI, the Bennett Trust, Murphy, Sherer, Sexton, Silverman, Maggio, Klejna, O'Kelley, Gantcher, and Breitman (collectively, the "Section 20(a) IPO Defendants"), on behalf of Plaintiffs and all members of the Class who purchased Bonds and/or Refco stock during the Class Period.

806. As alleged herein, Refco violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by making false and misleading statements in connection with the purchase or sale of securities and by participating in a fraudulent scheme and course of business or conduct in connection with the IPO and thereafter. This fraudulent conduct was undertaken with scienter, because Refco is charged with the knowledge and scienter of Defendant Bennett and others who of or recklessly disregarded the falsity of the Company's statements and of the fraudulent nature of its scheme.

807. Plaintiffs and the other members of the Class who purchased Bonds or Refco stock during the Class Period suffered damages in connection with their purchases of those securities, as a direct and proximate result of Refco's primary violations of Section 10(b) and Rule 10b-5.

808. The THL Defendants were controlling persons of Refco from the date of the IPO through and including October 17, 2005, due (among other reasons alleged herein) to their approximate 44% direct and indirect ownership interest in Refco, and due to the service of the THL Individual Defendants on Refco's eight-member Board of Directors.

809. Defendant Bennett was a controlling person of Refco from the date of the IPO through and including October 18, 2005, due (among other reasons alleged herein) to his 34% ownership interest in Refco (through RGHI and the Bennett Trust), as well as his positions as Chairman of the Board, President, and Chief Executive Officer of Refco.

810. Defendants RGHI and the Bennett Trust were controlling persons of Refco on and after the date of the IPO due (among other reasons alleged herein) to their approximate 20% and 14% respective ownership interests in Refco, and the fact that they were controlled by Bennett and used by him to hold his interest in the Company.

811. Defendants Bennett, Murphy, Sherer, Sexton, Silverman, Maggio, and Klejna were controlling persons of Refco on and after the date of the IPO, due (among other reasons alleged herein) to their executive positions with Refco; their direct involvement in the day-to-day operations of Refco, including its financial reporting and accounting functions; and their signatures on and participation in the preparation and dissemination of Refco's false financial statements and other public statements.

812. Defendants O'Kelley, Gantcher, and Breitman were controlling persons of Refco on and after the date of the IPO, due (among other reasons alleged herein) to their service on the Audit Committee of Refco. As members of the Audit Committee, these defendants were responsible for: overseeing Refco's financial reporting, accounting, and internal controls; overseeing the activities of Refco's outside auditors and reviewing the scope and results of those

audits with the auditors; meeting with and making recommendations to Refco's Board of Directors concerning the foregoing activities; and approving the false and misleading financial statements and other public statements as referenced herein.

813. By virtue of the foregoing, each of the Section 20(a) IPO Defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Refco, including the content and dissemination of the false or misleading statements complained of herein.

814. The Section 20(a) IPO Defendants did not act in good faith in connection with the conduct at issue in this Claim. Further, these defendants directly or indirectly induced the act or acts constituting Refco's violations of the Exchange Act by, among other things, orchestrating the sham transactions that caused the Company's financial statements to be materially misstated, and/or signing and/or approving the false and misleading statements that were issued by Refco.

815. The Section 20(a) IPO Defendants are culpable for participation in the matters alleged herein, because they acted with knowledge that the Company's public statements were materially false or misleading, or omitted material information, or they acted with reckless disregard for the truth.

816. Facts giving rise to a strong inference of the Section 20(a) IPO Defendants' culpability are alleged in detail above.

817. By virtue of their positions as controlling persons of Refco and their culpable participation in the Company's violations of the Exchange Act, the Section 20(a) IPO Defendants are each jointly and severally liable pursuant to Section 20(a) of the Exchange Act, with and to the same extent as Refco, for Refco's primary violations of Section 10(b) and Rule 10b-5.

COUNT FIFTEEN

Control Person Liability Pursuant to Section 20(a) of the Exchange Act Against Mayer Brown on Behalf of Plaintiffs and all Class Members (Based on Violations of Section 10(b) and Rule 10b-5 by Collins, Koury, Monk, and Other Mayer Brown Partners and Employees)

818. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

819. This Claim is brought pursuant to Section 20(a) of the Exchange Act against Mayer Brown based on violations of Section 10(b) and Rule 10b-5 by Collins, Koury, Monk, and other Mayer Brown partners and employees.

820. As alleged herein, Collins, Koury, Monk, and other attorneys at Mayer Brown violated Section 10(b) and Rule 10b-5 by making false and misleading statements in connection with the purchase or sale of securities and/or by participating in a fraudulent scheme and course of business or conduct. This fraudulent conduct was undertaken with scienter, as alleged above.

821. Plaintiffs and the other members of the Class suffered damages in connection with their purchases of Refco securities during the Class Period, as a direct and proximate result of the violations of Section 10(b) and Rule 10b-5 by Collins, Koury, Monk, and other Mayer Brown partners and employees.

822. Mayer Brown was a controlling person of Collins, Koury, Monk, and all other Mayer Brown partners and employees at the time of their violations of Section 10(b) and Rule 10b-5, due (among other reasons alleged herein) to: the fact that Koury, Monk, and other attorneys who engaged in the conduct alleged herein were employees of Mayer Brown; the fact that Collins and other Mayer Brown partners were members of Mayer Brown's partnership and signatories to its partnership agreement and related documents; Mayer Brown's control over the compensation of Collins, Koury, Monk, and all other Mayer Brown partners and employees;

Mayer Brown's control over these individuals' ability to advance in their careers and obtain promotions and/or partnership at Mayer Brown; Mayer Brown's direct involvement in and control over the ability of Collins, Koury, Monk, and other Mayer Brown attorneys to accept clients and to perform services for such clients, including Refco; Mayer Brown's direct involvement in and control over Collins' submission of bills to clients, including Refco; and Mayer Brown's direct supervision and control over Koury, Monk, and the other Mayer Brown partners and employees who were assigned to assist Collins in providing services for his clients, including Refco. Further, Mayer Brown had knowledge and possession of copies of the documents alleged by Plaintiffs to have been used in furtherance of the plan, scheme and course of conduct set forth herein; had knowledge of the activities of Collins, Koury, Monk, and the other Mayer Brown attorneys who participated in the scheme through, inter alia, discussions at departmental meetings and periodic review sessions; and had the ability to prevent the scheme and fraudulent course of conduct.

823. Mayer Brown's control over Collins, Koury, Monk, and the other Mayer Brown partners and employees is further demonstrated by the existence of a Management Committee at Mayer Brown throughout the Class Period, as well as a Policy and Planning Committee. The Management Committee and the Policy and Planning Committee exercised control over all Mayer Brown partners and employees and had the power to influence and/or control their activities as alleged herein.

824. By virtue of the foregoing, Mayer Brown had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Collins, Koury, Monk, and the other Mayer Brown partners and employees with respect to the conduct

constituting their violations of Section 10(b) and Rule 10b-5, including their involvement in the fraudulent scheme detailed herein.

825. Mayer Brown did not act in good faith in connection with the conduct at issue in this Claim. Further, Mayer Brown directly or indirectly induced the act or acts constituting the violations of Section 10(b) and Rules 10b-5 by Collins, Koury, Monk, and other Mayer Brown partners and employees by, among other things, orchestrating the sham transactions that caused the Company's financial statements to be materially misstated; approving and assisting in the preparation of the Offering Memorandum, the Bond Registration Statement and the IPO Registration Statement; and permitting Mayer Brown to be identified as Refco's counsel in the Offering Memorandum and the IPO Registration Statement.

826. Mayer Brown is a culpable participant in the matters alleged herein, because it acted with knowledge that the Company's public statements were materially false or misleading, or omitted material information, or it acted with reckless disregard for the truth. Facts giving rise to a strong inference of Mayer Brown's scienter are set forth above.

827. By virtue of its position as a controlling person of Collins, Koury, Monk, and the other Mayer Brown partners and employees who violated Section 10(b) and Rule 10b-5, and by virtue of its culpable participation in those violations, Mayer Brown is jointly and severally liable for those violations pursuant to Section 20(a) of the Exchange Act, with and to the same extent as Collins, Koury, Monk, and the other Mayer Brown partners and employees.

COUNT SIXTEEN

**Pursuant to Section 20A of the Exchange Act,
On Behalf of Purchasers of Refco Stock,
Against Bennett, Thomas H. Lee Equity Fund V., L.P.,
Thomas H. Lee Parallel Fund V, L.P.,
Thomas H. Lee Equity (Cayman) Fund V, L.P.,
and Thomas H. Lee Investors Limited Partnership**

828. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

829. This Claim is brought pursuant to Section 20A of the Exchange Act against Defendants Bennett, Thomas H. Lee Equity Fund V., L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., and Thomas H. Lee Investors Limited Partnership (collectively, the "Section 20A Defendants") on behalf of all purchasers of Refco common stock pursuant to or traceable to the IPO.

830. The Section 20A Defendants, by virtue of their positions as insiders of Refco, had access to, and were in possession of, material non-public information about Refco at the time of the IPO. As alleged above, Bennett violated Sections 10(b) and 20(a) of the Exchange Act, and Defendants Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., and Thomas H. Lee Investors Limited Partnership violated Section 20(a) of the Exchange Act.

831. Defendant Bennett sold at least 5.375 million shares of Refco common stock in the IPO. Defendants Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., Thomas H. Lee Investors Limited Partnership, sold at least 7.719 million shares of Refco common stock in the IPO.

832. These sales were made contemporaneously with Class members' purchases of Refco common stock in the IPO.

833. All members of the Class who purchased shares of Refco common stock contemporaneously with sales of Refco common stock by the Section 20A Defendants (i) have suffered damages because, in reliance on the integrity of the market, they paid artificially inflated prices for Refco common stock as a result of the violations of Section 10(b) and 20(a) of the Exchange Act as alleged herein; and (ii) would not have purchased Refco common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially inflated by the Section 20A Defendants' false and misleading statements and concealment. At the time of the purchases of Refco stock by members of the Class who purchased in the IPO, the fair and true market value of Refco common stock was substantially less than the price paid by these Class members.

JURY DEMAND

834. Plaintiffs, on behalf of themselves and the Class, hereby demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief and judgment in their favor and against Defendants as follows:

A. Determining that this action is a proper class action and certifying Plaintiffs as the class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiffs and the other members of the Class against all Defendants for all damages sustained as a result of Defendants' wrongdoing, and for all damages sustained as a result of wrongdoing by persons controlled by Defendants and/or for whose conduct Defendants are responsible pursuant to principles of *respondeat superior*, in an amount to be proven at trial, together with interest thereon;

C. Awarding rescission and/or rescissory damages in favor of Plaintiffs and the other members of the Class;

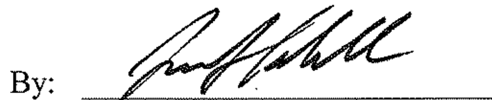
D. Awarding prejudgment interest and/or opportunity cost damages in favor of Plaintiffs and the other members of the Class;

E. Awarding Plaintiffs and the Class the fees and expenses incurred in this action, including attorneys' fees and expert fees; and

F. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 3, 2007

GRANT & EISENHOFER P.A.

By: 
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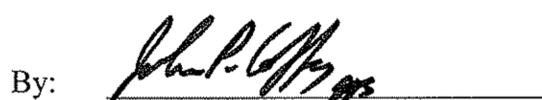
By: 
John P. Coffey (JC-3832)
Salvatore J. Graziano (SG-6854
John C. Browne (JB-0391)
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Attorneys for Lead Plaintiffs RH Capital Associates LLC and Pacific Investment Management Company LLC and Co-Lead Counsel for the Putative Class

EXHIBIT 1

Exhibit 1

GLOSSARY OF CERTAIN KEY TERMS[†]

144A Bonds	- refers to the $600 million of unregistered 9% Senior Subordinated Notes due in 2012 issued by Refco pursuant to the Offering Memorandum in 2004.
Audit Committee Defendants	- refers to Defendants O'Kelley, Breitman and Gantcher.
BAS	- refers to Defendant Banc of America Securities LLC.
BAWAG	- refers to BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft
Beckenham	- refers to Beckenham Trading Company, Inc.
Bennett	- refers to Defendant Phillip R. Bennett.
Bennett Trust	- refers to Defendant The Phillip R. Bennett Three Year Annuity Trust.
Bond Offering	- refers to Refco's issuance of the 144A Bonds in August 2004 pursuant to the Offering Memorandum.
Bond Road Show	- refers to the nationwide road show carried out by Defendants Bennett, Trosten and Jaeckel, together with representatives of the Bond Underwriter Defendants, in July 2004 in an effort to convince investors to purchase the 144A Bonds.

[†] The Glossary of Certain Key Terms is provided for the benefit of the reader only and does not in any way affect the content, meaning or interpretation of the Complaint. To the extent that there is any conflict, inconsistency or difference between statements included in the Glossary of Certain Key Terms and those in the Complaint -- the statements included in the Complaint govern.

GLOSSARY OF CERTAIN KEY TERMS†

Bond Registration Statement	- refers to the Form S-4 Registration Statement that the Company filed with the SEC on October 12, 2004, together with the subsequent amendments through Form S-4/A filings dated December 10, 2004; January 12, 2005; February 23, 2005; March 11, 2005; April 5, 2005; and April 6, 2005.
Bond Underwriter Defendants	- refers collectively to Defendants Credit Suisse, BAS, and Deutsche Bank.
Breitman	- refers to Defendant Leo R. Breitman.
CIM Ventures	- refers to CIM Ventures, Inc., a subsidiary of Ingram
Class Period	- refers to the period from July 1, 2004 to October 17, 2005.
Collins	- refers to Defendant Joseph P. Collins, the partner at Mayer Brown LLP who provided substantial legal services to Refco and oversaw the Refco account.
Company	- refers to Refco Inc. and all of its predecessors and affiliates, including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC, and Refco Finance Inc.
CMG	- refers to Defendant CMG Institutional Trading LLC.
Credit Suisse	- refers to Defendant Credit Suisse Securities (USA) LLC (formerly known as Credit Suisse First Boston LLC).
CS Land	- refers to CS Land Management LLC
Customer X	- refers to a third-party customer of Refco, which was involved in the undisclosed related-party transactions with Refco between February 2002 and August 2005.

GLOSSARY OF CERTAIN KEY TERMS†

Delta Flyer	- refers to Delta Flyer Fund, LLC, a limited liability company organized in Delaware on April 26, 2000.
Deutsche Bank	- refers to Defendant Deutsche Bank Securities, Inc.
DF Capital	- refers to DF Capital Inc. DF Capital was incorporated on July 10, 2002 as DF Overseas Inc., with its registered address listed as Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware. Defendant Bennett was the President and Secretary of DF Capital.
EMF	- refers to EMF Core Fund Limited, an affiliate of hedge fund manager EMF Financial Products, LLC
Exchange Act	- refers to the Securities Exchange Act of 1934, 15 U.S.C. § 78 et seq.
Exchange Offer	- refers to Refco's offer to exchange Registered Bonds for the outstanding 144A Bonds
FASCON	-refers to FASB Concept Statements.
Fiscal Year 2000 (or Fiscal 2000)	- refers to Refco's fiscal year ending February 29, 2000.
Fiscal Year 2001 (or Fiscal 2001)	- refers to Refco's fiscal year ending February 28, 2001
Fiscal Year 2002 (or Fiscal 2002)	- refers to Refco's fiscal year ending February 28, 2002.
Fiscal Year 2003 (or Fiscal 2003)	- refers to Refco's fiscal year ending February 28, 2003.
Fiscal Year 2004 (or	

GLOSSARY OF CERTAIN KEY TERMS[†]

Fiscal 2004)	- refers to Refco's fiscal year ending February 29, 2004.
Fiscal Year 2005 (or Fiscal 2005)	- refers to Refco's fiscal year ending February 28, 2005.
Former Refco Officer	- refers to a former senior operating officer of a Europe-based Refco affiliate.
GAAP	- refers to generally accepted accounting principles
GAAS	- refers to generally accepted auditing standards.
Gantcher	- refers to Defendant Nathan Gantcher.
Goldman Sachs	- refers to Defendant Goldman, Sachs & Co.
Grant	- refers to Defendant Tone Grant.
Grant Thornton	- refers to Defendant Grant Thornton LLP.
Green Shoe Option	- refers to the option granted to the Stock Underwriter Defendants to purchase additional shares to cover over-subscriptions of shares in connection with the IPO.
Harkins	- refers to Defendant David V. Harkins.
Harris Nesbitt	- refers to Defendant Harris Nesbitt Corp.
HSBC	- refers to Defendant HSBC Securities (USA) Inc.
Ingram	- refers to Ingram Micro, Inc. an information-technology distributor based in Santa Ana, California.
Inside Defendants	- refers to the Officer Defendants, Trosten, and the Audit Committee Defendants.

GLOSSARY OF CERTAIN KEY TERMS†

IPO	- refers to Refco's initial public offering, which took place on or about August 10, 2005.
IPO Prospectus	- refers to Refco's Form 424B1 prospectus filed in connection with the IPO.
IPO Registration Statement	- refers to Refco's Form S-1 registration statement dated April 8, 2005, Form-S-1/A registration statement dated May 27, 2005, Form S-1/A registration statement dated July 1, 2005, Form S-1/A registration statement dated July 20, 2005, Form S-1/A registration statement dated July 25, 2005, Form S-1/A registration statement dated August 8, 2005, Form S-1/A registration statement dated August 10, 2005, and Form 424B1 prospectus dated August 10, 2005, which were filed with the SEC.
Jaeckel	- refers to Defendant Scott L. Jaeckel.
J.P. Morgan	- refers to Defendant J.P. Morgan Securities, Inc.
Klejna	- refers to Defendant Dennis A. Klejna.
Koury	- refers to Paul K. Koury, a former Mayer Brown associate lawyer who worked extensively for Collins and performed substantial legal work for Refco.
LBO	- refers to the THL Partner Defendants' June 2004 Leveraged Buyout with Refco.
Lee	- refers to Defendant Thomas H. Lee.
Lind-Waldock	- refers to Lind-Waldock Securities LLC.
Maggio	- refers to Defendant Santo C. Maggio, also known as "Sandy" Maggio.
Mayer Brown	- refers to Mayer Brown LLP, which was Refco's primary outside legal counsel after 1994.

GLOSSARY OF CERTAIN KEY TERMS†

McCarthy	- refers Peter McCarthy, an executive officer of Refco.
Merger Agreement	- refers to the June 8, 2004 agreement between the THL Partner Defendants, and their passive co-investors, and Refco Group and RGHI.
Merrill Lynch	- refers to Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated.
Monk	- refers to Robert Monk, a former Mayer Brown associate lawyer who worked extensively for Collins and performed substantial legal work for Refco.
Murphy	- refers to Defendant Joseph J. Murphy.
New Refco	- refers to New Refco Group Ltd., LLC.
NYSE	- refers to the New York Stock Exchange.
Offering Memorandum	- refers to the document used to market the 144A Bonds to PIMCO, other Qualified Institutional Buyers and other members of the Class in July 2004.
Officer Defendants	- refers to Defendants Bennett, Sherer, Sexton, Maggio, Murphy, Silverman, and Klejna.
O'Kelley	- refers to Defendant Ronald L. O'Kelley.
PCAOB	- refers to the Public Company Accounting Oversight Board, which was established by the Sarbanes-Oxley Act of 2002.
PIMCO	- refers to Lead Plaintiff Pacific Investment Management Company LLC.
PIMCO High Yield Fund	- refers to Plaintiff PIMCO Funds: Pacific Investment Management Series - PIMCO High Yield Fund.
Principal A	- refers to the founder and principal of Customer X.

GLOSSARY OF CERTAIN KEY TERMS†

Ramirez & Co.	- refers to Defendant Samuel A. Ramirez & Company, Inc.
Ramler	- refers to Mark Ramler, Arthur Andersen's engagement partner for Refco prior to 2002, who took the Refco audit account with him to Grant Thornton in or about 2002.
Refco	- refers to Refco Inc., and all of its predecessors and affiliates, including, but not limited to, Refco Group Ltd., LLC, Refco Finance Holdings LLC, and Refco Finance Inc.
Refco Capital	- refers to Refco Capital Markets Ltd.
Refco Finance	- refers to Refco Finance Inc.
Refco Finance Holdings	- refers to Refco Finance Holdings LLC.
Refco Futures	- refers to Refco Managed Futures LLC.
Refco Group	- refers to Refco Group Ltd., LLC.
Registered Bonds	- refers to the registered bonds issued by Refco Group and Refco Finance pursuant to the Bond Registration Statement on or about April 13, 2005.
RGHI	- refers to Defendant Refco Group Holdings, Inc.
RH Capital	- refers to Lead Plaintiff RH Capital Associates LLC.
RSU	- refers to Restricted Stock Units, which were granted to the Officer Defendants and the Audit Committee Defendants in connection with the IPO.
SFAS	- refers to Statements of Financial Accounting Statements.
Sandler O'Neil	- refers to Defendant Sandler O'Neill & Partners, L.P.

GLOSSARY OF CERTAIN KEY TERMS†

Schoen	- refers to Defendant Scott A. Schoen.
Securities Act	- refers to the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*
Seibert & Co.	- refers to Defendant Muriel Siebert & Co. Inc.
Sexton	- refers to Defendant William M. Sexton.
Sherer	- refers to Defendant Gerald M. Sherer.
Silverman	- refers to Defendant Phillip Silverman.
Stock Underwriter Defendants	- refers collectively to Defendants Credit Suisse, BAS, Deutsche Bank, Goldman Sachs, Merrill Lynch, J.P. Morgan, Sandler O'Neill, HSBC, William Blair, Harris Nesbitt, CMG, Ramirez & Co., Seibert & Co., Williams Capital, and Utendahl.
THL Complaint	- refers to the Complaint filed by the THL Partner Defendants on November 14, 2005, and styled Thomas H. Lee Equity Fund V., L.P., et al. v. Phillip R. Bennett, et al., No. 05 Civ. 9608 (S.D.N.Y.).
THL Defendants	- refers collectively to the THL Individual Defendants and the THL Partner Defendants.
THL Individual Defendants	- refers to Defendants Lee, Harkins, Jaeckel and Schoen.
THL Partner Defendants	- refers to Defendants Thomas H. Lee Partners, THL Refco Acquisition Partners, THL Refco Acquisition Partners II, THL Acquisition Partners III, Thomas H. Lee Equity Fund V, L.P., Thomas H. Lee Parallel Fund V, L.P. and Thomas H. Lee Equity (Cayman) Fund V, L.P., Thomas H. Lee Investors Limited Partnership, and the 1997 Thomas H. Lee Nominee Trust.

GLOSSARY OF CERTAIN KEY TERMS†

THL Managers	- refers to THL Managers V, LLC, of which Thomas H. Lee Partners is the Managing Member.
Thomas H. Lee Partners	- refers to Defendant Thomas H. Lee Partners, L.P.
Trosten	- refers to Defendant Robert C. Trosten.
Utendahl	- refers to Defendant Utendahl Capital Partners, L.P.
Westminster-Refco	- refers to Westminster-Refco Management LLC.
William Blair	- refers Defendant William Blair & Company, L.L.C.
Williams Capital	- refers to Defendant The Williams Capital Group, L.P.

EXHIBIT 2

Exhibit 2

(Reference Chart for Claims)[1]

Count	**I**	**II**	**III**	**IV**	**V**	**VI**	**VII**	**VIII**	**IX**	**X**	**XI**	**XII**	**XIII**	**XIV**	**XV**	**XVI**
Officer Defendants																
Bennett	X	X	X	X	X	X		X	X			X	X	X		X
Sherer				X	X	X		X	X				X	X		
Sexton		X	X	X		X		X	X			X	X	X		
Maggio		X	X	X		X		X	X			X	X	X		
Murphy		X	X	X		X		X	X			X	X	X		
Silverman		X	X	X					X			X	X	X		
Klejna			X	X		X		X	X				X	X		
Bennett Shell-Entity Defendants																
RGHI		X		X		X		X		X		X	X	X		
Bennett Trust				X		X		X					X	X		
Mayer Brown Defendants																
Mayer Brown									X		X				X	
Joseph Collins									X		X					
Audit Committee Defendants																
O'Kelley			X	X	X	X		X	X				X	X		
Breitman			X	X	X	X		X	X				X	X		
Gantcher			X	X	X	X		X	X				X	X		
THL Defendants																
Thomas H. Lee Partners				X		X		X	X				X	X		
THL Partner Defendants	X	X		X		X		X	X			X	X	X		X[2]
THL Individual Defendants				X		X		X	X				X	X		
Lee		X	X	X	X	X		X	X			X	X	X		
Harkins			X	X	X	X		X	X				X	X		
Jaeckel	X		X	X	X	X		X	X				X	X		
Schoen			X	X	X	X		X	X				X	X		
Other Defendants																
Stock Underwriter Defs.					X		X									
Bond Underwriter Defs.	X		X													
Trosten	X	X							X			X	X			
Grant Thornton			X		X				X							
Grant		X										X				

Securities Act

Count I Section 12(a)(2) (144 A Bonds)
Count II Section 15 (144 A Bonds)
Count III Section 11 (Registered Bonds)
Count IV Section 15 (Registered Bonds)
Count V Section 11 (IPO)
Count VI Section 15 (IPO)
Count VII Section 12 (a)(2)(IPO)
Count VIII Section 15 (IPO)

Exchange Act

Count IX Section 10b-5(b)
Count X Section 10b-5(a) and (c) (RGHI)
Count XI Section 10b-5(a) and (c) (MB and Collins)
Count XII Section 20(a) (144 A Bonds)
Count XIII Section 20(a) (Bonds between Bond Offering and IPO)
Count XIV Section 20(a) (Bonds or Stock after IPO)
Count XV Section 20(a) (MB)
Count XVI Section 20A (Stock)

[1] This chart is provided solely as a reference aid for the reader of the Second Amended Consolidated Class Complaint (the "Complaint"), and is not intended to modify the Complaint. If there are any conflicts between this chart and the Complaint, the Complaint shall control.
[2] This Claim is brought only against the following THL Partner Defendants: Thomas H. Lee Equity Fund V., L.P., Thomas H. Lee Parallel Fund V, L.P., Thomas H. Lee Equity (Cayman) Fund V, L.P., and Thomas H. Lee Investors Limited Partnership.