

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re)

REFCO INC., *et al.*,)

Debtors.)

) Chapter 11

) Case No. 05-60006 (RDD)

) Jointly Administered

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULE 9019 APPROVING SETTLEMENT
OF CONTROVERSIES AND DISPUTES AMONG THE DEBTORS,
THE RCM TRUSTEE, THE PRE-PETITION SECURED LENDERS
AND CERTAIN OTHER PARTIES**

Upon the motion (the “**Motion**”) of Refco Group, Inc. (“**Refco**”) and its affiliated chapter 11 debtors in the above captioned cases (the “**Chapter 11 Debtors**”, and together with Refco, LLC, the “**Debtors**”), and the Chapter 11 trustee (the “**RCM Trustee**,” and collectively with the Chapter 11 Debtors, the “**Movants**”) of Refco Capital Markets, Ltd. (“**RCM**”), seeking approval of a compromise and settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) of certain controversies and disputes among the Movants, other parties-in-interest, the Agent (as hereinafter defined) and the lenders from time to time (in their capacities as such, the “**Lenders**”) under that certain Credit Agreement dated as of August 5, 2004 (as amended, supplemented or otherwise modified, the “**Credit Agreement**”) among Refco Finance Holdings LLC (now Refco Group Ltd., LLC), the Lenders, Banc of America Securities LLC, Credit Suisse First Boston and Deutsche Bank Securities Inc., as co-lead arrangers and joint book running managers, Credit Suisse First Boston, as syndication agent,

Deutsche Bank Securities Inc., as documentation agent and Bank of America, N.A. as administrative agent, swing line lender and L/C issuer (in its capacity as administrative agent for the Lenders, the “**Agent**”) (the Credit Agreement, all related mortgages, security agreements, guarantees and other related agreements and documentation executed in connection with the Credit Agreement, hereinafter collectively referred to as the “**Loan Documents**”); and

The Movants and certain other parties-in-interest in these cases (as identified in Schedule I attached hereto, along with any other Releasing Party (as hereinafter defined) that executes and delivers a Participating Party Agreement, the “**Participating Parties**”) having agreed to settle and compromise disputes with the Agent and the Lenders, and be bound by the terms of this Order; and

The Agent and the Required Lenders (as defined in the Credit Agreement, the “**Required Lenders**”) having agreed to the terms of this Order; and

Each of the Movants and the Participating Parties having executed and delivered an agreement (the “**Participating Party Agreement**”), in form and substance satisfactory to the Agent, in which they (i) agree to use their reasonable best efforts to ensure that any plan confirmed in these cases is a Qualifying Plan (as defined below) and (ii) confirm that they are bound by the terms and conditions of this Order (including, without limitation, the releases contained herein), regardless of whether any plan or plans of reorganization are agreed upon or confirmed in these cases or any of the Chapter 11 Debtors’ cases is converted to chapter 7; and

A hearing on the Motion (the “**Hearing**”) having taken place before the Court on September 27, 2006 and the Court having found the proposed settlement and compromise

as set forth in this Order to be fair and reasonable, in the best interests of the estates of the respective Debtors and their respective creditors and other parties-in-interest, and necessary and essential for the successful negotiation and implementation of a global plan in these cases;

NOW, THEREFORE, upon the Motion and the evidence presented at the Hearing and the agreement among the parties to the terms and conditions of this Order, and there being due and sufficient cause for entry of this Order by the Court;

IT IS HEREBY DETERMINED, FOUND, ADJUDGED AND ORDERED
THAT:

1. The Motion is a “core proceeding,” and this Court has jurisdiction over the parties and property affected hereby pursuant to 28 U.S.C. §§157(b) and 1334.
2. Due and sufficient notice of the Motion and Hearing has been given.
3. This Order shall, on the terms and conditions hereinafter set forth, and to the extent provided herein, settle all disputes, controversies, claims and causes of action between the Movants and the Participating Parties on the one hand, and the Agent and the Lenders on the other, and shall be binding on all such estates and parties-in-interest and any successor or assign thereof (including, without limitation, any Chapter 7 or Chapter 11 trustee appointed in any of the Cases and any litigation trust or similar vehicle established in connection with these cases), and shall not be modified or otherwise affected by any chapter 11 plan confirmed in these cases or any order of the Court, except as contemplated by this Order or as otherwise agreed in writing by all of the parties affected thereby.

4. The compromises and settlements contained herein, including, without limitation, those that would become effective at the time of the effectiveness of, and pursuant to, a Qualifying Plan, are in the best interest of the Debtors and their estates, and confer substantial benefit on the estates and their creditors by, among other things, limiting potentially substantial secured claims for additional interest, fees and indemnities in favor of the Agent and/or the Lenders. Such compromises and settlements, and the contemplated consideration therefor as set forth in this Order, are the result of arm's-length bargaining, and are necessary and essential to permit the negotiation and implementation of a global plan in these cases.

5. Except to the extent compromised and settled pursuant hereto, the claims of the Agent and the Lenders under the Loan Documents (the "**Secured Claims**"), as filed in the respective Debtors' cases, are allowed in full as secured claims in the cases of Refco and the Debtors who are Guarantors (as defined in the Loan Documents). The Secured Claims are secured by valid and perfected liens (the "**Liens**") on the collateral identified in the Loan Documents and in that certain order dated October 20, 2005, as subsequently amended, providing adequate protection to the Lenders (the "**Collateral**"), which Collateral had on the date of the filing of each Debtor's respective chapter 11 or chapter 7 case (the "**Petition Date**"), and continues to have, a value in excess of the amount of the Secured Claims. The Secured Claims and Liens are not subject to avoidance under the Bankruptcy Code or under otherwise applicable law.

6. On or before the later of (i) October 16, 2006 and (ii) such other date as may be agreed to by the Agent and the Required Lenders, the following amounts shall be irrevocably paid to the Agent by the Debtors in respect of the Secured Claims to be

applied by the Agent in accordance with the Loan Documents (such date of payment being referred to herein as the “**Payment Date**”):

(a) \$642,000,000, constituting the full outstanding principal amount of the Loans (as defined in the Loan Documents, the “**Loans**”);

(b) \$1,693,276.42, calculated as set forth on Schedule II hereto, and constituting the full amount of interest accrued and unpaid under the Loan Documents as of the Petition Date;

(c) all interest accrued on principal and interest payable under the Loan Documents from the Petition Date through the Payment Date, payable at the Post-Petition Interest Rate and compounded daily from the Petition Date through the Payment Date (the “**Post-Petition Interest Rate**” for purposes hereof being the Base Rate in effect from time to time plus the Applicable Rate applicable to Base Rate Loans, as each such term is defined in the Credit Agreement, but without the additional 2% per annum (“**Default Interest**”) provided for in clause (c) of the definition of “Default Rate” in the Credit Agreement);

(d) all fees and expenses (including, without limitation, fees and expenses of counsel and financial advisors to the Agent and/or the Lenders) reimbursable under the Loan Documents through September 30, 2006; *provided, however,* that the fees and expenses through September 30, 2006 payable pursuant to this paragraph 6(d) shall not exceed \$13,500,000 unless (i) the Hearing is contested or any discovery is taken with respect to the Motion or (ii) any motion, demand, claim, cause of action, lawsuit or discovery against the Agent and/or any Lender, or with respect to any matter(s) in which the Agent and/or any Lender has

a material interest, is commenced or threatened by any party-in-interest prior to September 30, 2006, in which case the amount to be paid under this paragraph 6(d) shall be the actual amount of fees and expenses (including, without limitation, fees and expenses of counsel and financial advisors to the Agent and/or the Lenders) reimbursable under the Loan Documents through September 30, 2006; and

(e) all fees, expenses and other amounts (exclusive of principal and interest on the Loans) reimbursable or payable under the Loan Documents through the Payment Date, including, without limitation, fees and expenses of counsel and financial advisors to the Agent and/or the Lenders incurred from October 1, 2006 through the Payment Date.

7. Upon the occurrence of the Payment Date, and in consideration for each Releasing Party being bound by its respective release pursuant to paragraph 8, the Agent and the Lenders, and each of their successors and assigns, shall be permanently enjoined from taking, or benefiting from, any action or commencing any legal proceedings to seek recovery of any losses in respect of principal and/or interest on the Loans (including, without limitation, for recovery of Default Interest) against (a) the Debtors or any of their respective properties and (b) each such other Releasing Party, including, without limitation, the holders of Securities under and as defined in that certain Indenture, dated as of August 5, 2004 (the “**Indenture**”) among Refco Finance Holdings LLC (now Refco Group Ltd., LLC), Refco Finance Inc. and Wells Fargo Bank, N.A. as trustee.

8. In consideration of the waivers and compromises made by the Agent and the Lenders as set forth herein, the parties have agreed and it is hereby ordered that upon

the Payment Date, each of the Lenders and the Agent, and each of their directors, officers, employees, agents, professionals, properties, advisors, successors and assigns (collectively, the “**Lender Releasees**”) shall be fully and forever released by the Debtors, their respective estates, their creditors and all other parties-in-interest in these cases, and the respective successors and assigns of each of the foregoing, including, without limitation, any Chapter 7 or Chapter 11 trustee appointed in any of the Cases and any litigation trust or similar vehicle established in connection with these cases (collectively, the “**Releasing Parties**”) from, against and with respect to any and all actual or potential demands, claims, causes of action (including, without limitation, derivative causes of action), suits, assessments, liabilities, losses, costs, damages, penalties, fees, charges, expenses and all other forms of liability whatsoever, in law or equity (including, without limitation, actions seeking to recharacterize, avoid, subordinate, set aside or disallow the liens or claims of any Lender Releasee, or seeking turnover of property, damages or any other affirmative recovery from any Lender Releasee, including, without limitation, any claim for contribution), whether asserted or unasserted, known or unknown, foreseen or unforeseen, pending or anticipated, arising under the Bankruptcy Code or under otherwise applicable law, that any Releasing Party ever had, now has or hereafter may have (whether by assignment or otherwise) based in whole or in part upon any act or failure to act by any of the Lender Releasees, on or prior to the Payment Date, in contemplation of the execution of the Loan Documents, in connection with the execution of the Loan Documents or the making or repayment of the Loans, or in connection with any transactions directly or indirectly related or connected in any way to the Loan Documents, the Collateral, the use of proceeds of Loans made under the Loan

Documents, or any other transactions related to or in connection with any of the foregoing (collectively, the “**Released Claims**”). Furthermore, upon the Payment Date, (a) each Releasing Party shall be deemed to expressly waive any and all defenses to the foregoing releases, including, without limitation, any rights conferred upon it by any statute, law, equitable principle or otherwise that provides that a release does not extend to claims of which the releasing party does not know or suspect to exist in its favor at the time of executing the release, which if known by the releasing party would have materially affected the releasing party’s settlement with the released parties; (b) the releases granted pursuant to this paragraph 8 shall be full and final, whether or not a Qualifying Plan becomes effective, and shall constitute a complete defense against the Released Claims with respect to any and all parties who may seek to assert such claims derivatively or otherwise on behalf of or in the name or stead of the Debtors or their estates or any successor thereto, or any other Releasing Party; (c) each Releasing Party shall be permanently enjoined from seeking recovery of any amounts sought to be recovered from the Lender Releasees by any party through any cross-claim in any action brought by any Releasing Party against any party; and (d) each Releasing Party shall be permanently enjoined from taking any action or commencing any proceeding against the Lender Releasees or their property with respect to any of the Released Claims.

9. If and only if a Qualifying Plan becomes effective in these cases (the date on which such a Qualifying Plan becomes effective being referred to herein as the “**Plan Effective Date**”) and such Qualifying Plan (and the related order confirming such plan) remains in full force and effect (including, without limitation, with respect to the releases

thereunder or required pursuant to paragraph 10(b)) as it relates to the treatment of the Agent and the Lenders:

(a) any claims of the Agent and/or the Lenders for indemnification and other amounts payable under the Credit Agreement (other than fees and expenses of counsel and financial advisors) (the “**Unsatisfied Credit Agreement Claims**”) shall be deemed estimated at \$0 (the “**Estimated Unsatisfied Credit Agreement Claims**”) for purposes of allowance in the respective Debtors’ cases pursuant to Section 502(c) of the Bankruptcy Code, but, in the case of indemnification claims, only to the extent they arise out of claims released by the Qualifying Plan as provided in paragraph 10(b);

(b) the claims of the Agent and/or the Lenders that are not Secured Claims arising out of the Loan Documents, including, without limitation, claims asserted for fraud and misrepresentation allegedly perpetrated by any Debtor, shall be deemed estimated at \$0 for purposes of allowance pursuant to Section 502(c) of the Bankruptcy Code; and

(c) the Agent and the Lenders shall be deemed to waive their right to seek recovery of any Estimated Unsatisfied Credit Agreement Claims under the subordination provisions of the Indenture against the holders of the Securities (as defined in the Indenture).

Each Movant shall use its reasonable best efforts to ensure that any chapter 11 plan confirmed in these cases is a Qualifying Plan.

10. For purposes hereof, “**Qualifying Plan**” means a chapter 11 plan for all of the Chapter 11 Debtors that:

(a) provides that the terms and conditions of this Order shall govern the treatment of the Agent, the Lenders and the other Lender Releasees, and does not contain any term or condition inconsistent with the terms and conditions of this Order;

(b) specifies that in addition to the releases provided in this Order, the Lender Releasees shall be generally released by all third parties (the “**Plan Releasing Parties**”) to the same extent as the releases described in paragraph 8;

(c) permanently enjoins the Releasing Parties and the Plan Releasing Parties from taking, or benefiting from, any action or commencing any legal proceedings against the Agent or any Lender with respect to any matters released under this Order or under such Qualifying Plan (the “**Released Matters**”);

(d) permanently enjoins the Agent and the Lenders from taking, or benefiting from, any action or commencing any legal proceedings against any Releasing Party or Plan Releasing Party to recover for any losses in respect of principal and/or interest on the Loans; and

(e) is confirmed pursuant to a confirmation order that (i) expressly confirms and approves the releases of the Agent, the Lenders and other Lender Releasees referred to in clause (b) of this paragraph 10 and (ii) includes injunctions comparable in scope to the injunctions referred to in clauses (c) and (d) of this paragraph 10.

11. For the avoidance of doubt, and notwithstanding paragraphs 7(c) and 10(d), in the event the Agent or any Lender is not released by any party to the full extent contemplated in paragraph 10(b) (including, without limitation, as a consequence of

conversion of the case of any Chapter 11 Debtor to chapter 7), (a) the claims of each of the Agent and such Lenders, as the case may be, under the Loan Documents for indemnification arising from the failure of such release to be provided (whether such claims are fixed, liquidated, contingent or unliquidated) shall be allowed in full as Secured Claims against the Debtors party to the Loan Documents, and shall be provided for in full under any plan or plans in respect of such Debtors and (b) the Agent and the Lenders shall be entitled to take any actions they deem necessary or appropriate to recover such Secured Claims.

12. It is the intention of the Agent and/or the Lenders to continue to employ professionals to assure enforcement of the terms of this Order and implementation of a Qualifying Plan in accordance with the terms set forth above, and the Debtors are authorized and directed without further order of the Court to pay the fees and expenses of the Agent and such Lenders incurred after the Payment Date, which shall continue to be payable in accordance with the Loan Documents, promptly upon receipt of invoices therefor. Consistent with the foregoing, all documents and pleadings filed by any Movant in connection with the enforcement of the terms and conditions of this Order, or the implementation of a Qualifying Plan, shall be reasonably acceptable to the Agent as to matters affecting the Agent or the Lenders, and the Agent and the Lenders reserve the right to object to any action or proceeding that is not consistent with the terms of this Order or any plan that is not a Qualifying Plan. In addition, the Agent and the Lenders reserve all of their rights (including, without limitation, the right to enforce and vote on any plan) with respect to any Secured Claims that are not satisfied or extinguished pursuant to this Order.

13. Upon the irrevocable payment in full of amounts required to be paid on or before the Payment Date pursuant to paragraph 6,

(a) the Debtors shall be authorized to use cash collateral of the Lenders to pay allowed administrative expenses of the respective estates (subject to any applicable requirements of the Bankruptcy Code or orders of the Court) and to make other payments under an effective Qualified Plan or as permitted by the Bankruptcy Court without any further consent of or provision of adequate protection to the Agent or the Lenders;

(b) the adequate protection motion currently before the Court shall be postponed to the date of the hearing on confirmation of a plan;

(c) so long as any plan proposed or confirmed and consummated in any of these cases is a Qualifying Plan, and such plan (and the order confirming such plan) remains in full force and effect, the Agent and the Lenders shall not seek any additional adequate protection; and

(d) the Agent and the Lenders shall be deemed to consent to the granting by the Debtors to RCM of security interests and liens to secure credit obligations incurred by one or more of the Debtors for (but only for) the purpose of funding or refinancing the funding of the payments to the Agent made on the Payment Date pursuant to paragraph 6 to the extent that the principal amount of the credit obligations does not exceed the total sum of \$200 million, which security interests and liens shall be subject and subordinate to any unsatisfied Secured Claims of the Agent and/or the Lenders (other than for Default Interest)

in an amount equal to the amount of the Default Interest accrued through the Payment Date, and shall otherwise have priority over the Liens.

14. This Order shall not be subject to modification or amendment by further order of the Court without the written consent of all of the Movants and the Agent.

15. This Order shall become binding on the parties, and the Payment Date may occur, only upon satisfaction of the following conditions:

(a) this Order shall have been entered by the Court and, unless otherwise waived by the Agent and the Required Lenders, shall have become a final order in full force and effect, not subject to any further appeal, rehearing, modification or amendment, provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to this Order will not cause such Order not to be a final order;

(b) unless otherwise waived by the Agent and the Required Lenders, each Participating Party shall have executed and delivered the Participating Party Agreement, which shall be in full force and effect; and

(c) the Agent and the Required Lenders shall have agreed in writing to the terms and conditions of this Order, which shall be in full force and effect.

16. In the event that this Order does not become binding, it shall not constitute an admission by any party-in-interest of any determination or finding stated herein.

17. This Court shall retain jurisdiction to enforce the terms of this Order, and any releases, injunctions or further determinations provided for or contemplated hereby.

New York, New York
_____, 2006

Honorable Robert D. Drain
United States Bankruptcy Judge