

**EXHIBIT D**

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

In re:	)	Chapter 11
	)	
<b>Refco, Inc., et al.</b>	)	Case No. 5-60006 (RDD)
	)	(Jointly Administered)

**BID PROCEDURES**

As contemplated by and incorporated in that certain *Order (A) Authorizing Debtors in Possession to Enter Into Purchase Agreement, (B) Approving Notice and Bid Procedures, Including Break Up Fee, Expense Reimbursement, and Overbid Protections For the Sale of REFCO FX Associates, LLC's Assets and Equity in Forex Capital Markets, LLC and (C) Scheduling a Hearing to Approve Sale* (the "Bid Procedures Order"), the following procedures (the "Bid Procedures") shall be the exclusive mechanism governing any sale of the Acquired Assets which may be to either:<sup>1</sup>

- (a) The Purchasers on the terms and conditions of the Purchase Agreement (the "Acquisition Transaction"): or
- (b) The Successful Bidder (as defined herein) on the terms and conditions of the Successful Bid and the associated Purchase Agreement.

**I. Determining Potential Bidders**

To participate in the bidding process and to receive non-public information concerning the Acquired Assets (as defined in the Purchase Agreement), each person or entity other than the

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<sup>1</sup> Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement dated November \_\_, 2005 and/or the Bid Procedures Order, *provided, however*, that the meanings ascribed in the Bid Procedures Order shall be controlling.

Purchasers (a "Potential Bidder") must deliver to the Debtors the following materials (the "Potential Bid Package") on or before \_\_\_\_\_, 2005, at : \_\_.m, the "Bid Qualification Deadline":

**A. Non-Binding Indication of Interest.**

An executed non-binding indication of interest.

**B. Confidentiality Agreement.**

An executed nondisclosure agreement substantially in the form attached to the Bid Procedures Motion (the "NDA").

**C. Evidence of Financial Bona Fides.**

On or before the Bid Qualification Deadline, a Potential Bidder must submit to the Debtors written evidence of its financial and operational wherewithal to complete the contemplated transactions and perform the obligations under the Assumed Contracts, including, but not limited to:

- (i) The Potential Bidder's current financial statements (audited if available); or
- (ii) Any such other form of financial disclosure or credit-quality support information or enhancement acceptable to the Debtors, demonstrating such Potential Bidder's ability to close the contemplated transaction and perform the obligations under the Assumed Contracts.

**II. Determination of Potential Bidders; Notification**

**A. Determination of Potential Bidders.**

On or before one business day after the Bid Qualification Deadline, the Debtors shall determine whether that party qualifies as a Potential Bidder. The Debtors shall have the discretion to determine whether a party may be a Potential Bidder based upon the content of the Potential Bid Package.

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**B. Notification of Potential Bidders**

Upon determining that a party is a Potential Bidder the Debtors shall immediately thereafter notify each such Potential Bidder in writing of its decision. Contemporaneous with notifying a party that it is a Potential Bidder, the Debtors shall provide that Potential Bidder with:

- (a) Access to an electronic data room containing the Disclosure Package (as defined in the MOU); and
- (b) the Purchase Agreement.

Each Potential Bidder shall be required, in accordance with the NDA, to return its Disclosure Package to the Debtors or certify that it has destroyed all copies of, compilations of and notes (in whatever form) concerning such Disclosure Package promptly after the earlier to occur of (x) notification to such Potential Bidder by the Debtor that it is not a Qualified Bidder (as hereinafter defined) or (y) at the conclusion of the Auction.

**III. Determining Qualified Bids and Qualified Bidders**

**A. Terms and Conditions of a Qualified Bid.**

Each offer, solicitation or proposal (a "Bid") from a Potential Bidder must satisfy each of the following conditions to be a "Qualified Bid" and for the Potential Bidder to be a "Qualified Bidder":

*1. Identification of Bidder.*

The Bid shall identify the Potential Bidder and the Bidder's Sponsors (if any) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction. If the Potential Bidder is a newly formed acquisition vehicle, evidence (in the form of binding commitment letters, guarantees or otherwise) that the Potential Bidder is able to fulfill all other obligations in connection with the contemplated transactions including, but not limited to, paying liquidated damages, if any.

2. *Corporate Authority.*

A Bid shall contain written evidence of the Potential Bidder's Board of Directors' (or comparable governing body) approval of the contemplated transaction; *provided, however,* that, if the Potential Bidder is an entity specially formed for the purpose of acquiring the Acquired Assets, then the Potential Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the contemplated transactions by the Board of Directors (or comparable governing body) of each of the equity holder(s) of the Potential Bidder (the "Bidder's Sponsors").

3. *Nature of Bids for Assets.*

The Bid must be a binding offer and irrevocable pending a determination that the Bid was not selected as the Successful Bid (as defined below) at the conclusion of the Auction. A Bid must be for all of the Acquired Assets and must contain sufficient cash consideration to pay the Purchasers' Break-Up Fee, Purchasers' Expense Reimbursement and the Cure Amount (as hereinafter defined). Bids for less than all of the Acquired Assets are not permitted by the Bid Procedures Order and will not be considered or accepted. Any contract proposed by a Qualified Bidder other than Purchasers must include an acknowledgment that neither FXCM, FXT nor any of their direct or indirect subsidiaries or affiliates (collectively, the "FXCM Entities") are making any representation or warranty with respect to the FXCM Entities or their business, that such Purchasers will not hold or seek to hold the FXCM Entities liable for any statements, or information provided by or made by the FXCM Entities, and that such Qualified Bidder will not make any claims against the FXCM Entities concerning, arising out of or relating to such statements or information.

4. *Minimum Bid.*

The consideration proposed by the Bid must be in cash or assumption of liabilities, in the manner substantially similar to that the Purchase Agreement, and must equal or exceed the sum of:

- (a) The Purchase Price (as defined in the Purchase Agreement); plus

- (b) The "Minimum Overbid Increment," which shall be \$2 million in cash; plus
- (c) The Purchasers' Break Up Fee; plus
- (d) The Purchasers' Expense Reimbursement; plus
- (e) An amount sufficient to cure all monetary defaults under the FMA (the "Cure Amount").

5. *No Break- Up Fee, Etc. for Potential Bidders*

A Bid may not request any break-up fee, termination fee, expense reimbursement or similar type of payment. Moreover, neither the tendering of a Bid nor the determination that a Bid is a Qualified Bid shall entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment.

6. *Bid Deadline*

The Debtors must receive a Bid in writing, on or before the "Bid Deadline," which shall be December [\_\_], 2005, at \_:00 \_m. Eastern Time.

**B. Qualified Bidders.**

Pursuant to the terms and conditions set forth in this § III.B, the Debtors shall identify and notify the Qualified Bidders by December \_\_, 2005. The Debtors shall notify any bidder who has submitted a Bid that does not appear to be a Qualified Bidder of this determination and in good faith seek to resolve any impediment to the bidder's becoming a Qualified Bidder. Any party in interest may seek the Court's review of the Debtors' determination whether a bidder is a Qualified Bidder; *provided, however*, that any such challenge must be raised and concluded prior to the commencement of the Auction. The Debtors' determination of who is a Qualified Bidder shall become irrevocable and unreviewable once the Auction has commenced; *provided, however*, that nothing contained herein shall

be construed as in any way limiting the right of FXCM pursuant to § 365 of the Bankruptcy Code to object to the assumption and assignment of the FMA to any party at the Sale Hearing.

*1. Purchasers.*

Notwithstanding anything in these Bid Procedures to the contrary, the Purchasers are deemed a Qualified Bidder, and the Acquisition Transaction shall be deemed a Qualified Bid, for all applicable purposes under these Bid Procedures.

*2. Other Qualified Bidders.*

Each Bid received from a Potential Bidder that satisfies each of the conditions set forth in §§ III.A.1 through III.A.5, inclusive, shall constitute a "Qualified Bid" and the bidder shall be deemed a "Qualified Bidder."

**IV. Notice of the Auction**

If the Debtors receive a Qualified Bid other than the Acquisition Transaction, an auction (the "Auction") will be held on December \_\_, 2005, at \_\_:00 \_\_.m. Eastern Time at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 or at any such other location as the Debtors may hereafter designate. On or prior to 5:00 p.m. Eastern Time on December \_\_, 2005<sup>2</sup>, the Debtors shall provide to Purchasers and each Qualified Bidder that has submitted a Qualified Bid:

- (a) Written notice of the Auction; and
- (b) Copies of all Qualified Bids.

The Debtors shall disregard any bids received after the Bid Deadline, and any such bids shall not be Qualified Bids.

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<sup>2</sup> No later than 72 hours prior to the Auction.

**V. The Auction**

**A. Attendance at and Participation in the Auction.**

The only parties eligible to participate in the Auction shall be: (i) the Purchasers; and (ii) those Qualified Bidders who have submitted a Qualified Bid to the Debtors. No other person or entity shall be entitled to attend or participate at the Auction. Representatives of, and advisors to, the Purchasers or to Qualified Bidders, their sponsors, the Official Committee of Creditors (the "Creditors' Committee"), the United States Trustee, and representatives of a syndicate led by Bank of America that has entered into a credit facility with the Debtors (the "Bank" and together with the Creditors' Committee and the United States Trustee, the "Observers") shall be entitled to attend the Auction.

**B. The Auction Process.**

*1. The Debtors Shall Conduct the Auction.*

The Debtors and their professionals shall direct and preside over the Auction. At the commencement of the Auction, the Debtors shall announce the highest and best Qualified Bid (the "Opening Bid") that the Debtors have received. All bids made thereafter shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each bid shall be fully disclosed to all other bidders. The Debtors shall conduct the Auction in a manner determined to maximize the value of the Acquired Assets and be in the best interest of the estates and their creditors, which may include separate discussions with Bidders while the Auction is pending to help clarify and develop Bids; *provided, that* all formal Overbids and the Successful Bid shall be announced and recorded. The Debtors have discretion to require that every Overbid shall include a provision that it remains open and irrevocable until the earlier to occur of (a) consummation of the sale of the Acquired Assets or (b) twenty-five (25) days from entry of the Sale Order. The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Purchasers' Bid, all Overbids and the Successful Bid.

2. *Terms of Overbids.*

An "Overbid" is any bid made at the Auction after the Debtors' announcement of the Opening Bid. To submit an Overbid for purposes of this Auction, a Qualified Bidder must comply with the following conditions:

a. Minimum Overbid Increment.

Each Overbid shall be made in increments of at least \$1 million in excess of the previously announced highest and best bid. The value of any Overbid made by the Purchasers shall be deemed to have been made in an amount equal to the Overbid plus the Purchasers' Break-Up Fee, the Purchasers' Expense Reimbursement and the Cure Amount (solely for purposes of determining the highest and best bid), so that the evaluation of each Overbid shall be on the basis of the aggregate net value to the Debtors' estates.

b. Remaining Terms are the Same as for Qualified Bids.

Except as modified below, an Overbid must comply with the conditions for a Qualified Bid as set forth in §§ III.A.1 through III.A.5, inclusive and §V.B.2.



3. *Announcing Overbids.*

The Debtors shall announce at the Auction the material terms of each Overbid, provide copies of the proposed form of Purchase Agreement to all Qualified Bidders, the basis for calculating the total consideration offered in each such Overbid, and the resulting benefit to the Debtors' estates. The Debtors may reject any Bid that does not conform to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Bidding Procedures Order, the Bidding Procedures, or that is contrary to the Sellers and the Debtors' estates and creditors. The Debtors and Sellers, as the case may be, shall consult with the representatives of the Creditors' Committee and Bank when making any determinations or announcements and exercising their discretion as contemplated by the Bidding Procedures Order and the Bidding Procedures.

4. *Closing the Auction.*

The Debtors shall not close the Auction unless and until the Purchasers have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid.

**VI. Identification of the Successful Bidder and Acceptance of Successful Bid**

**A. Identification of the Successful Bidder.**

At the close of the Auction, the Debtors shall identify which Qualified Bidder had the highest and best bid (the "Successful Bid," and the bidder being the "Successful Bidder"), which will be determined by considering, among other things:

- (a) the total consideration to be received by the Debtors;
- (b) the likelihood of each Qualified Bidder's ability to timely close a transaction and make any deferred payments, if applicable;
- (c) the likelihood that each Qualified Bidder will be able to demonstrate adequate assurance of future performance of the Debtor's obligations under the Assumed Contracts; and
- (d) the net benefit to the estate, taking into account the Purchasers' rights to the Purchasers' Bid Protection.

The Debtors shall consult with representatives of the Creditors' Committee and Bank in

identifying which Qualified Bid is the highest and best.

**B. Acceptance of Bid From Successful Bidder.**

The Debtors presently intend to sell the Acquired Assets to the Successful Bidder, pursuant to the form of Purchase Agreement agreed to by the Debtors and the Successful Bidder. The Debtors' identification of a Successful Bid shall not constitute their acceptance of any such bid. The Debtors shall have accepted and be bound by the Successful Bid only when such Bid has been approved by the Court at the Sale Hearing.

Except as otherwise provided in the Purchase Agreement agreed to by the Debtors and the Successful Bidder, all of the Debtors' right, title and interest in and to the Acquired Assets shall be sold free and clear of all liens, claims, encumbrances, and interests thereon, if any, other than Assumed Liabilities (collectively, the "Transferred Liens"), with such Transferred Liens attaching to the proceeds of the Acquired Assets with the same validity and priority as the Transferred Liens had on the Acquired Assets immediately prior to their sale.

**VII. Debtors' Best Efforts**

The Debtors shall use their best efforts to obtain the Court's approval of the sale of the Acquired Assets to the Successful Bidder pursuant to the form of the Purchase Agreement agreed to by the Debtors and the Successful Bidder.

**VIII. The Sale Hearing**

The hearing (the "Sale Hearing") on whether to grant the relief sought in the Sale Motion shall be held on December [ ], 2005, at \_\_:\_\_\_.m. Eastern Time, in the Courtroom of the Honorable Robert D. Drain, and may be adjourned from time to time without further notice other than an announcement in open court at the Sale Hearing. At the Sale Hearing, if no other Qualified Bid was received, the Debtors will seek entry of an order, *inter alia*, authorizing and approving the sale of the Acquired Assets to the Purchasers pursuant to the terms and conditions set forth in the Purchase

Agreement, or, if a Qualified Bid was identified as the Successful Bid, to the Successful Bidder pursuant to the form of the Purchase Agreement agreed to by the Debtors and the Successful Bidder.

**IX. Purchasers' Bid Protection**

The Purchasers shall be entitled to all of the protections set forth in paragraph D of the Bid Protection Order.

The Purchasers' Expense Reimbursement and Purchasers' Break-Up Fee shall be an allowed administrative expense claim under section 503 and 507(b) of the Bankruptcy Code in the chapter 11 cases of FXA and Group. If the Purchasers are not the Successful Bidder, then Purchasers' Expense Reimbursement, Purchasers' Break-Up Fee and Cure Amount shall be paid at the Closing of any transaction involving the Acquired Assets provided that such transaction closes within nine months after the date of entry of the Bid Procedures Order. Notwithstanding the foregoing, the Cure Amount shall be due and payable upon any assumption of the FMA pursuant to section 365 of the Bankruptcy Code regardless of when such assumption occurs.