

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re :
: Refco Inc., et al., : Chapter 11
: Debtors. : Case No. 05 - 60006 (RDD)
: : (Jointly Administered)
: :
-----X

BID PROCEDURES

As contemplated by and incorporated in that certain Order (A) Authorizing The Debtors In Possession To Enter Into Repurchase Agreement, (B) Approving Notice And Bid Procedures, Including Breakup Fee, Expense Reimbursement, And Overbid Protections, For The Sale Of Refco Group Ltd., LLC's Equity Interest In Partners Capital Investment Group, L.L.C .And (C) Scheduling A Hearing to Approve A Sale (the "Bid Procedures Order"), the following procedures (the "Bid Procedures") shall be the exclusive mechanism governing any sale of the Purchase Shares which may be to either:¹

- (a) Partners Capital Investment Group, L.L.C. ("Purchaser") on the terms and conditions of the repurchase agreement, substantially in the form attached as an Exhibit to the Bid Procedures Order (the "Purchase Agreement"), between Refco Group Ltd., LLC ("Seller") and Purchaser (the

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

"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 Purchase Shares (as defined in the Purchase Agreement), each person or entity other than the Purchaser (a "Potential Bidder") must deliver to the Debtors the following materials (the "Potential Bid Package") on or before _____, 2006, 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.

Written evidence of its financial and operational wherewithal to complete the contemplated transactions, 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 Party's ability to close the contemplated transaction.

Notwithstanding the foregoing, the Debtors in their discretion may waive this requirement when determining whether a party qualifies as a Potential Bidder; provided, however, that any party that receives such a waiver must provide written evidence of financial and operational wherewithal for it to be a Qualified Bidder.

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 a party that submitted a Potential Bid Package 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.

B. Notification of Potential Bidders.

Upon determining that a party is a Potential Bidder, the Debtors shall notify each such party in writing by email of its decision. Contemporaneous with notifying a party that it is a Potential Bidder, the Debtors shall provide that Potential Bidder with access to an electronic data room containing the documents set forth on Schedule 1 to the Purchase Agreement and such additional documents required to be provided to Potential Bidders under the terms of the Bid Procedures Order or Purchase Agreement (the "Disclosure Package").

The Debtors must provide Purchaser and any Potential Bidder with reasonable access during normal business hours to the Seller's books, records, key personnel, officers, financial advisors, and legal counsel for the purpose of completing all due diligence investigations, and

must otherwise cooperate in good faith with Purchaser and Potential Bidders in connection with their due diligence; *provided, however*, that the Debtors are not required to provide confidential or proprietary information to a competitor if the Debtors reasonably believe that disclosure of that information would be detrimental to the Debtors' interests and operations. The Debtors must cooperate in good faith to resolve disclosure disputes using protocols that are customary in transactions of this type.

Each Potential Bidder is required to certify that it has returned or destroyed all copies of, compilations of, and notes (in whatever form) concerning, the Disclosure Package in accordance with the Nondisclosure Agreement.

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 Purchase Shares, 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.

3. *Nature of Bids for Assets.*

A Bid must be for all of the Purchase Shares and must contain sufficient cash consideration to pay the Breakup Fee and Expense Reimbursement. The Bid must not contain any material conditions other than approval by the Bankruptcy Court. The Bid must not be conditioned on the outcome of any remaining due diligence or any financing contingency.

4. *Minimum Bid.*

In addition to the minimum cash requirement set forth in III.A.3, the consideration proposed by the Bid must be equal to or exceed the sum of:

- (a) The Purchase Price (as defined in the Purchase Agreement); plus
- (b) The "Minimum Overbid Increment," which shall be \$50,000 in cash; plus
- (c) The Breakup Fee; plus
- (d) The Expense Reimbursement.

5. *No Breakup Fee, Etc. for Potential Bidders.*

A Bid may not request any breakup 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 breakup 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 January [___], 2006, at _:00 _.m. Eastern Time.

7. *Rejection of Bids.*

The Seller, in its business judgment and sole discretion, may reject any Bid that is not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Bid Procedures Order, these Bidding Procedures or that is contrary to the best interests of the Debtors' estates and creditors; provided, however, that the Acquisition Transaction shall be deemed a Qualified Bid and in compliance with the foregoing.

8. *Other Terms.*

All Bids, the Auction and these Bidding Procedures are subject to such other terms and conditions as are announced by the Seller. The Bidding Procedures may be altered and/or modified by the Debtors, at any time, as may be determined to be in the best interests of the Seller and the Debtors' estates and creditors.

9. *Irrevocability of Bids.*

All Bids shall remain open and irrevocable in accordance with the last terms submitted by Qualified Bidders (either the originally submitted bid or as may be modified during the Auction) until the earlier to occur of (i) the consummation of the sale of the Purchase Shares, or (ii) 25

days following entry of the Sale Order.

10. Non-conforming Bids.

Notwithstanding anything to the contrary herein, the Debtors shall have the right to entertain bids that do not conform to one or more of the requirements set forth herein.

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 January __, 2006. 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 bidder that was deemed not to be a Qualified Bidder may seek the Court's review of the Debtors' determination whether it 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. Notwithstanding anything in these Bid Procedures to the contrary, the Purchaser is deemed a Qualified Bidder, and the Acquisition Transaction shall be deemed a Qualified Bid, for all applicable purposes under these Bid Procedures.

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 January __, 2006, at __:00 __.m. Eastern Time at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, and NY 10036 or at any such other location as the Debtors may hereafter designate. No later than 72 hours before the beginning of the Auction, the Debtors shall provide to Purchasers and each

Qualified Bidder that has submitted a Qualified Bid notice of the Auction by electronic mail.

The Debtors shall disregard any bids received after the Bid Deadline, and any such bids shall not be Qualified Bids. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for resumption of the Auction shall be given to all Qualified Bidders and Observers (as defined below).

V. The Auction

A. Attendance at and Participation in the Auction.

The only parties eligible to participate in the Auction shall be: (i) the Purchaser and (ii) those Qualified Bidders who have submitted a Qualified Bid to the Debtors. No other person or entity shall be entitled to participate at the Auction. Only representatives of, and advisors to, the Purchaser, Qualified Bidders, their sponsors, the Committee, the Agent, and the United States Trustee (collectively, 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 or otherwise best Qualified Bid (the "Opening Bid") that the Debtors have received. The Debtors shall conduct the Auction in a manner determined to maximize the value of the Purchase Shares and be in the best interest of the estates and their creditors, which may include separate discussions with Bidders (with, in the Debtors' reasonable discretion, representatives of the Committee and Agent) 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 may 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 Purchase Shares 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 \$10,000 in excess of the previously announced highest or otherwise best bid. The value of any Overbid made by the Purchaser shall be deemed to have been made in an amount equal to the Overbid plus the Breakup Fee and the Expense Reimbursement), 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 Section, III.A and Section 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 Seller and the Debtors' estates and creditors.

4. Consultation.

The Debtors shall consult with the representatives of the Creditors' Committee and Agent, when making any determinations or announcements and exercising their discretion as contemplated by the Bidding Procedures Order and the Bidding Procedures.

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 or otherwise 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; and
- (c) the net benefit to the estate, taking into account the Breakup- Fee and Expense Reimbursement.

The Debtors shall consult with representatives of the Creditors' Committee and Agent in identifying which Qualified Bid is the highest or otherwise best.

B. Acceptance of Bid from Successful Bidder.

The Debtors presently intend to sell the Purchase Shares 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 Purchase Shares shall be sold free and clear of all liens, claims, encumbrances, and interests thereon, if any, in accordance with Section 363 of the Bankruptcy Code (collectively, the "Transferred Liens"), with such Transferred Liens attaching to the proceeds of the Sale of Purchase Shares with the same validity and priority as the Transferred Liens had on the Purchase Shares 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 Purchase Shares 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 January [], 2006, 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 Purchase Shares to the Purchaser 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 Purchaser shall be entitled to all of the protections set forth in paragraph D of the Bid Procedures Order.

The Expense Reimbursement and Breakup Fee shall be an allowed administrative expense claim under section 503 and 507(b) of the Bankruptcy Code in the chapter 11 case of Seller. If the Purchaser is not the Successful Bidder, then the Expense Reimbursement and Breakup Fee shall be paid to Purchaser as provided in Exhibit A to the Purchase Agreement, and only under the circumstances there provided.