CONFIDENTIAL-PORTIONS OF THIS COMPLAINT HAVE BEEN REDACTED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION

This Document Relates to:
RH CAPITAL ASSOCIATES LLC, PACIFIC INVESTMENT MANAGEMENT COMPANY LLC. and PIMCO FUNDS: PACIFIC INVESTMENT MANAGEMENT SERIES – PIMCO HIGH YIELD FUND, on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

MAYER BROWN LLP and JOSEPH P. COLLINS,

Defendants.

Master File: No. 05 Civ. 8626 (GEL)

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AGAINST MAYER BROWN LLP AND JOSEPH P. COLLINS

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Max W. Berger (MB-5010)
John P. Coffey (JC-3832)
Salvatore J. Graziano (SG-6854)
John C. Browne (JB-0391)
Jonathan Harris (JH-3047)
Jeremy P. Robinson
David H. Webber (DW-3876)
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

GRANT & EISENHOFER P.A.
Stuart M. Grant (SG-8157)
James J. Sabella (JS-5454)
Jonathan D. Margolis (JM-1128)
485 Lexington Avenue, 29th Floor
New York, NY 10017
Telephone: (646) 722-8500
Facsimile: (646) 722-8501

- and -

Megan D. McIntyre
Jeff A. Almeida
Peter B. Andrews
Christine M. Mackintosh
Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100

Attorneys for Plaintiffs RH Capital Associates LLC, Pacific Investment Management Company LLC and PIMCO Funds: Pacific Investment Management Series – PIMCO High Yield Fund, and Co-Lead Counsel for the Putative Class in the Consolidated Class Action, Master File No. 05 Civ. 8626 (GEL)

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RH Capital Associates LLC ("RH Capital"), Pacific Investment Management Company LLC ("PIMCO") and PIMCO Funds: Pacific Investment Management Series – PIMCO High Yield Fund ("PIMCO High Yield Fund") bring this federal securities law class action on behalf of themselves and all other persons and entities, other than as specified 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 August 5, 2004 and October 17, 2005 (the "Class Period"). RH Capital and PIMCO are the Court-appointed Lead Plaintiffs in *In re Refco, Inc. Securities Litigation*, Master File No. 05, Civ. 8626 (GEL) (the "Refco Class Action"), and PIMCO High Yield Fund is a named plaintiff in the Refco Class Action. On May 5, 2006, RH Capital, PIMCO and PIMCO High Yield Fund filed the First Amended Consolidated Class Action Complaint (the "Amended Class Complaint") in the Refco Class Action.[1] RH Capital, PIMCO and PIMCO High Yield Fund bring the claims asserted below in their capacity as Lead Plaintiffs and named plaintiffs in the Refco Class Action and pursuant to the Court's June 5, 2007 Scheduling Order and Discovery Plan, which provides that Lead Plaintiffs may join additional parties to the Refco Class Action on or before December 3, 2007.

I. <u>NATURE OF THE ACTION</u>

1. This action is brought as part of the Refco Class Action and asserts claims on behalf of the Class against Mayer Brown LLP ("Mayer Brown"), a large, well-known law firm, and Mayer Brown partner Joseph P. Collins ("Collins," together with Mayer Brown, "Defendants"). The claims asserted herein are based on Defendants' participation in a fraudulent

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Amended Class Complaint.

scheme designed to artificially inflate the price of Refco's publicly-traded securities. The scheme perpetrated by Mayer Brown, Collins and others ultimately led to the collapse of Refco in one of the most precipitous corporate meltdowns in U.S. history.

2. One of the most troubling aspects of the Refco debacle is that so many of Wall Street's elite professionals participated in selling a substantial share of the fraud-ridden Company to public investors. The list of players in the Refco saga includes some of the most well-known Wall Street investment banks (including Credit Suisse, Bank of America and Goldman Sachs), a private equity fund with approximately $12 billion under management (Thomas H. Lee Partners), and a major accounting firm (Grant Thornton LLP). As set forth in the Amended Class Complaint, each of these entities (and others) faces significant liability to public investors for their culpability in Refco's collapse.

3. Another name must be added to that unfortunate list. As described herein, there is compelling evidence that Mayer Brown, one of the largest U.S. law firms, was deeply entangled as a knowing participant in the Refco fraud. While Mayer Brown was not specifically named as a defendant in the Amended Class Complaint, it was referred to therein as the "Law Firm" (*see, e.g.,* ¶ 403) and aspects of its role in Refco's demise were alleged. As more fully described herein, at each step along the path that eventually led to Refco's collapse, Refco's former Chief Executive Officer ("CEO") Philip R. Bennett ("Bennett") was able to turn to his long-term "go-to-guy" at Mayer Brown, senior partner Collins, and other attorneys at Mayer Brown, to work with him in devising, documenting and concealing the massive fraudulent scheme that was intended to, and did, result in the false financial statements on which investors innocently relied. In return for tens of millions of dollars in legal fees from Refco, Collins and Mayer Brown

abandoned their responsibilities as honest professionals and became willing participants in a fraudulent scheme that cost innocent investors hundreds of millions of dollars.

4. The story of the demise of Refco is by now well known. As discussed at length in the Amended Class Complaint, on October 10, 2005, little more than two months after completing a highly touted and extremely lucrative initial public offering, Refco admitted that the Company had concealed hundreds of millions of dollars in uncollectible debt owed by an off-balance sheet entity controlled by Bennett. This announcement set into motion an entirely foreseeable series of events and subsequent disclosures that culminated in Refco filing for bankruptcy just a few days later. 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.

5. The seeds of the Refco debacle were planted in the late 1990s, when a number of Refco's most significant customers suffered massive trading losses rendering them unable to repay hundreds of millions of dollars worth of "no questions asked" margin loans extended to them by the Company. Rather than properly account for these uncollectible debts on the Company's books, Refco—with the direct and active participation of Collins and Mayer Brown—simply transferred those "IOUs" to Refco Group Holdings, Inc. ("RGHI"), an entity controlled by Bennett. As Collins and Mayer Brown knew, RGHI was a shell company that 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.

6. Once these uncollectible debts were fraudulently transferred off of Refco's balance sheet, Refco was left with a multi-hundred million dollar receivable owed to it by RGHI. Collins and Mayer Brown knew that RGHI, as a non-operating company, had 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.

7. To keep this receivable hidden from public view, Refco, Collins and Mayer Brown devised a scheme whereby, just days before Refco closed its books for a given financial period, hundreds of millions of dollars would be "loaned" by Refco to third-parties. Pursuant to the contracts drafted by Collins and Mayer Brown, the third-parties were required to simultaneously "loan" that same amount to RGHI, which would then use the proceeds to temporarily pay down the receivable it owed to Refco, leaving an apparently collectible receivable from a bona fide third-party on Refco's books at period end. Pursuant to documents created by Collins and Mayer Brown, several days later, after the close of Refco's financial period, the transactions would be unwound and the RGHI receivable would be returned to Refco's books. Thus, as Collins and Mayer Brown well understood, Refco was able to issue materially false and misleading financial statements that concealed the existence of the related-party RGHI receivable.

8. The extent and breadth of Mayer Brown's involvement in this fraudulent scheme is remarkable. At the very beginning of the scheme, Collins and Mayer Brown played a direct role in transferring at least $70 million dollars worth of the uncollectible debts off of Refco's books by "selling" these debts to RGHI. In October 1997, when a Refco customer named Victor Niederhoffer ("Niederhoffer") lost nearly $100 million on investments made in part with improperly collateralized "margin" loans extended by Refco, Niederhoffer was unable or unwilling to repay the debt. With Collins' and Mayer Brown's help, Refco and Bennett reached a "settlement" with Niederhoffer providing that Niederhoffer would liquidate his account at

Refco and turn over the proceeds to the Company. In return, pursuant to documents negotiated and drafted by Collins and Mayer Brown, Refco released Niederhoffer for any remaining liability on the debt (approximately $71 million).

9. As Collins and Mayer Brown knew, the Niederhoffer debt was uncollectible and should immediately have been written off by Refco. Rather than Refco doing so (and suffering the market consequences of recording such a large loss), Collins drafted documents assigning the uncollectible Niederhoffer debt to RGHI, in return for RGHI assuming the $71 million (uncollectible) "receivable" owed to Refco. As Collins and Mayer Brown knew, this 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, there is only one rational inference as to why the transfer was made: to fraudulently remove the problematic debt from Refco's books and replace it with one that appeared collectible. Moreover, as Collins and Mayer Brown both knew through their representation of RGHI in various transactions, RGHI was a non-operating company without significant cash flow and unable to pay the receivable it owed to Refco. 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.

10. The Niederhoffer transaction provided the blueprint by which Refco would transfer hundreds of millions of dollars in additional uncollectible debt to RGHI over the next several years. There is significant evidence that Collins and Mayer Brown were aware of some or all of these additional fraudulent transfers. Indeed, by June 2002, Collins prepared a

document that expressly acknowledged that RGHI owed Refco $350 million in so-called "inter-company debt." Again, rather than respond to the obviously fraudulent nature of this debt, Collins and Mayer Brown became actively involved in concealing it. Collins and Mayer Brown negotiated, documented, and provided other substantial and material services to Refco and Bennett in connection with the fraudulent round-trip loan transactions described herein over a five year period and on at least seventeen separate occasions. These transactions were complete shams where, often, no money even changed hands.

11. The evidence of Mayer Brown's involvement in the fraud described herein is so compelling that the Examiner appointed in Refco's bankruptcy proceedings concluded in his July 11, 2007 report (the "Examiner's Report") 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's Report noted that none of the Mayer Brown witnesses interviewed by the Examiner—even to this day—could articulate any legitimate business purpose for the round trip loans. As the Examiner's Report concluded, "rather than having any apparent business purpose, the transactions appear suspicious on their face." As set forth below, Mayer Brown, Collins, and other Mayer Brown attorneys prepared and edited Refco's misleading financial statements and other public disclosures including the Offering Memorandum and the IPO Registration Statement, which specifically identified Mayer Brown as counsel of Refco.

II. JURISDICTION AND VENUE

12. The claims asserted herein arise under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and the rules and regulations promulgated thereunder, including

SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Rule 10b-5") and under Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

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

14. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. §§ 78aa. 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.

III. THE PARTIES AND RELEVANT NON-PARTIES

A. Plaintiffs

15. 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. As set forth in documents attached to the Amended Class Complaint, during the Class Period, RH Capital purchased or acquired Refco securities in and/or traceable to the August 2005 IPO, and suffered millions of dollars in damages as a result of the violations of 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.

16. 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. As set forth in documents attached to the Amended Class Complaint, 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.

17. 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.

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

B. Defendants

19. 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 has more than 1,500 lawyers and 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.

20. Defendant Joseph P. Collins is currently listed on Mayer Brown's website as a "senior 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 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." Collins' expertise and sophistication is further demonstrated by his (a) membership on the Executive Council of the American Bar Association Committee on Regulation of Futures and Derivatives Instruments; (b) membership on the Association of the Bar of the City of New York's "Futures Regulation Committee" and Chairperson position on the "Futures Commission Merchant Subcommittee"; and (c) membership on the Illinois Secretary of State's "Commodities Law Advisory Committee." As set forth above, Defendant 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 went 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. From 1994 forward, Refco was an extremely lucrative client for Mayer Brown and Collins' largest personal client. Mayer Brown collected approximately $3 million to $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.

21. Throughout the Class Period and earlier, Refco was an extremely lucrative client for Collins and Mayer Brown. Between 1994 and October 2005, Mayer Brown attorneys, with Collins as the primary contact and billing partner, provided a broad range of legal services to Refco. 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. As described below, Mayer Brown was intimately familiar with Refco's operations and finances and played a significant and direct role in designing, implementing and effecting a fraudulent scheme intended for the sole purpose of rendering Refco's financial statements materially false and misleading.

22. Other Mayer Brown attorneys referenced herein who played a significant role in Mayer Brown's representation of Refco and were directly involved in the fraudulent scheme set forth below 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.

C. The Refco Entities

23. Refco Inc. is a non-party that is not named as a Defendant in this lawsuit or in the Refco Class Action 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 August 2005 IPO, and was the issuer of the stock sold pursuant to the August 2005 IPO. 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.

24. Refco Group Ltd., LLC ("Refco Group") is a non-party that is not named as a Defendant in this lawsuit or the Refco Class Action 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.

25. New Refco Group Ltd., LLC ("New Refco") is a non-party that is not named as a Defendant in this lawsuit or the Refco Class Action 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 Thomas H. Lee Entities and RGHI owned approximately 57% and 43%, respectively, of New Refco. Upon completion of the August 2005 IPO, Refco became the public company parent of New Refco.

26. Refco Finance Holdings LLC ("Refco Finance Holdings") is a non-party that is not named as a Defendant in this lawsuit or the Refco Class Action 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.

27. Refco Finance Inc. ("Refco Finance") is a non-party that is not named as a Defendant in this lawsuit or the Refco Class Action 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.

28. Refco Capital Markets Ltd. ("Refco Capital") is a non-party that is not named as a Defendant in this lawsuit or the Refco Class Action due to its filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code on October 17, 2005. Refco Capital is a Bermuda-based Refco subsidiary that traded over-the-counter derivatives contracts in a largely unregulated market.

D. RGHI

29. Refco Group Holdings, Inc. ("RGHI") is a named Defendant in the Amended Class Complaint filed in the Refco Class Action. RGHI is a Delaware corporation that during the Class Period was wholly owned and controlled by Refco's CEO, Bennett. Prior to the date of the Bond Offering (defined below), RGHI was owned 50% by Bennett and 50% by former Refco CEO, Tone Grant. RGHI was the primary shell entity that Bennett used to hold his substantial personal stockholdings in Refco. As described below, 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. Collins and Mayer Brown repeatedly acted as counsel to RGHI and, through this representation as well as through Mayer Brown's representation of Refco, Collins and Mayer Brown knew that RGHI was simply a shell entity that lacked any business or operational function other than to serve as a "parking" vehicle for Bennett (and, before the Bond Offering, Refco's former CEO, Tone N. Grant) to hold their personal holdings of Refco stock.

E. <u>Certain Refco Officers</u>

30. The following officers and/or directors of Refco were named as Defendants in the Amended Class Complaint filed in the Refco Class Action and are relevant to the allegations set forth below.

(a) <u>Phillip R. Bennett.</u> Phillip R. Bennett was the President, 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. 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.

(b) <u>Santo C. Maggio.</u> 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. 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.

F. <u>The Thomas H. Lee Entities</u>

31. 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. As described below, in June 2004, Thomas H. Lee Partners and its

affiliates and other related parties (the "Thomas H. Lee Entities") purchased a 57% equity stake in the Company for approximately $507 million.

IV. CLASS ALLEGATIONS

32. 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"). With the exception of adding Collins and Mayer Brown as Defendants—and the resulting exclusion of Mayer Brown and its employees and affiliates from the Class (as set forth below)—the Class definition is the same as that set forth in the Amended Class Complaint.

33. Consistent with the Amended Class Complaint, the Class consists of all persons and entities who purchased or otherwise acquired Refco Finance Holdings 9% Senior Subordinated Notes due 2012 (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 and its subsidiaries and affiliates; (b) Defendants Collins and Mayer Brown; (c) the Defendants named in the Amended Class Complaint; (d) members of the families of Collins or any of the individual Defendants named in the Amended Class Complaint; (e) the subsidiaries and affiliates of Defendant Mayer Brown and/or any of the Defendants named in the Amended Class Complaint; (f) any person or entity who is a partner, officer, director, employee, or controlling person of Refco (including any of its subsidiaries or affiliates) or of Defendant Mayer Brown and/or any Defendant named in the Amended Class Complaint; (g) any entity in which Defendant Mayer Brown, Defendant Collins or any Defendant named in the Amended Class Complaint has a controlling interest; (h) the directors' and officers' liability insurance carriers for Defendant Mayer Brown or any Defendant named in

the Amended Class Complaint, and any affiliates or subsidiaries thereof; and (i) the legal representatives, heirs, successors and assigns of any such excluded party.

34. 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.

35. 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.

36. 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.

37. 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 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.

38. 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. The questions of law and fact common to the Class are set forth in detail in the Amended Class Complaint,

along with certain undisputed material facts that are common to the claims of all Class members. (*See* ¶¶ 83, 84.)

39. The names and addresses of those persons and entities who purchased securities in the Bond Offering and the August 2005 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 underwriters of those securities. 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. REFCO'S CLOSE RELATIONSHIP WITH COLLINS AND MAYER BROWN

40. As described above, 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. This relationship began while Collins was an attorney at SH&W, and when Collins moved to Mayer Brown in 1994, he brought Refco to Mayer Brown as a client. From 1994 forward, Refco was an extremely lucrative client for Mayer Brown and Collins' largest personal client.

41. Between 1994 and October 2005, Mayer Brown attorneys, with Collins as the primary contact and billing partner, provided a broad range of legal services to Refco. For instance, 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. Refco's dependence on the legal services provided by Mayer Brown, its primary outside counsel, is further confirmed by the fact that Refco had a very small in-house legal team.

42. The tiny size of Refco's in-house legal staff made it virtually impossible for them 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, as described above, Collins and Mayer Brown were the "go to" outside counsel for Refco from 1994 until October 2005.

43. A few 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 litigations in federal and state court litigations and 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."

44. 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. The extent and breadth of the legal work that Mayer Brown performed for Refco ensured that Mayer Brown's relationship with the Company, through Collins, was an extremely lucrative one.

The Examiner's Report concludes that Mayer Brown billed Refco approximately $5 million annually and collected nearly $24 million in legal fees between January 1, 1998 and October 7, 2005 for legal work performed for Refco.

45. The fact that Mayer Brown served as counsel to Refco was also repeatedly stated to Refco investors and Class members including, specifically, in the Offering Memorandum and the IPO Registration Statement as set forth below.

VI. THE FRAUDULENT SCHEME

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

46. As set forth in the Amended Class Complaint, prior to its implosion, Refco was one of the world's largest providers of brokerage and clearing services in the international derivatives, currency and futures markets. 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 securities markets.

47. 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 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.

48. While these margin loans allowed the Company to increase its commissions, revenues and profits, they also exposed Refco 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.

49. The inherent dangers posed by Refco's 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. These collapses included what became know as the "Asian Financial Crisis," in which sudden currency devaluations occurred in several Southeast Asian countries. These devaluations resulted in severe losses on large speculative trading "bets" that Refco and many of its customers had made in the (mistaken) belief that Southeast Asian governments would keep their currency at a fixed value against the United States Dollar. In addition, as international prices for oil, copper, gold and aluminum began to decline in 1998, the Russian economy was hit especially hard, and the Russian government gradually increased the interest rates on its domestic bonds to a staggering 70%. Refco and many of its customers took large positions in those bonds—gambling wrongly that the Russian government would honor its

debt obligations—and suffered significant losses when the Russian government defaulted on its domestic debt in August 1998. For instance, Refco itself lost $50 million in a single transaction in 1998 on an investment in Russian bonds. In total, Refco and its customers lost hundreds of millions of dollars in these financial reversals.

B. Collins, Mayer Brown and Refco Devise a Plan to Secretly Move Uncollectible Receivables Off of Refco's Books and Transfer Them to RGHI

50. 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. As Collins also knew, the collapse of Refco—his crown jewel client—would drastically reduce the annual "billings" that Collins generated at Mayer Brown, and would have had negatively impacted Collins' personal compensation.

51. As described in the Amended Class Complaint and in a superseding criminal indictment of Bennett and others filed on January 16, 2007 by the United States Attorney for this District (the "Superseding Indictment"), rather than disclose and write off these hundreds of millions of dollars of losses, Refco secretly transferred the bad debts to RGHI, the off-balance sheet entity owned by Bennett.

52. Collins and Mayer Brown played a substantial role in designing and implementing a method to secretly transfer at least $71 million of the Company's uncollectible

debt to RGHI. As set forth in the Examiner's Report and above, the Asian Financial Crisis resulted in one Refco customer, Niederhoffer, losing more than $90 million in investments made using Refco's "margin" loans. Niederhoffer was unable or unwilling to repay Refco for these losses and, under applicable accounting rules and regulations, Refco was required to disclose the losses and write them off. Instead of doing so, Collins, Mayer Brown and Refco devised and implemented a fraudulent scheme to manipulate Refco's financial results by transferring this uncollectible debt to RGHI and converting it into a receivable purportedly owed from RGHI to Refco.

53. This fraudulent scheme was initiated by Collins, Mayer Brown and Bennett in October 1997 through the negotiation and documentation of a "settlement" with Niederhoffer. The settlement provided that Niederhoffer would liquidate his Refco accounts and turn those amounts over to Refco in exchange for a release of liability on the much larger and uncollectible amounts owed by Niederhoffer to Refco. In return, Refco committed in writing—in documents prepared by Collins and Mayer Brown—not to pursue Niederhoffer for the remaining amounts. In order to conceal the Niederhoffer losses and remove them from Refco's books, Collins, Mayer Brown and Bennett then assigned 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—in documents drafted by Collins and Mayer Brown—agreed to "pay" Refco the full 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. There was no legitimate business purpose for this transaction.

54. According to the Examiner's Report, this fraudulent scheme was negotiated and documented by Mayer Brown attorneys, and primarily by Collins. For instance, a November 3, 1997 memorandum from Collins to individuals at Niederhoffer's company stated:

> Attached are the initial agreements with the Niederhoffer accounts which were superseded by the more formal legal agreements distributed earlier today.

Attached to the memorandum were several letter agreements between Niederhoffer and Bennett whereby Niederhoffer agreed to liquidate his accounts at Refco and Refco agreed not to pursue Niederhoffer for the outstanding amounts owed on the uncollectible "margin" loans.

55. Mayer Brown, and in particular, Collins, also drafted the documents assigning to RGHI Refco's so-called "right" to receive payments from Niederhoffer on the uncollectible "margin" loans. According to the Examiner's Report, Mayer Brown worked on several drafts of these assignments. One draft prepared by Mayer Brown and ultimately executed on October 28, 1997 states:

> The Assignor [Refco] proposes to assign to the Assignee [a subsidiary of RGHI] certain rights of the Assignor to Payments from the [Niederhoffer] Accounts in exchange for the transfer from the Assignee [RGHI subsidiary] to the Assignor [Refco] of an amount up to $71,000,000.

Bennett signed this document on behalf of the RGHI subsidiary involved. Thus, Collins, Mayer Brown and Refco fraudulently converted the uncollectible $71 million debt owed to Refco by Niederhoffer into a "receivable" owed to Refco by RGHI.

56. This transaction was a sham. As Collins and Mayer Brown knew, there was no conceivable legitimate business purpose for shuffling this uncollectible debt to RGHI, an off balance sheet entity owned and controlled by the Company's CEO. On its face, this transaction reeked of fraud and was designed for one purpose: to improperly remove the uncollectible debt

from Refco's books. Because Collins and Mayer Brown represented both Refco ***and*** RGHI in these transactions, Collins and Mayer Brown knew or recklessly disregarded that Refco could—and in this case did—use RGHI as an off balance sheet entity to hide uncollectible debts. And because Collins and Mayer Brown drafted the agreements "releasing" any claim that Refco had against Niederhoffer relating to the uncollectible margin loans, Mayer Brown also knew or recklessly disregarded that there was no legitimate business purpose for RGHI to "purchase" these debts from Refco for $71 million.

57. 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.

58. 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.

59. 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.

60. 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."

61. 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.

62. 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:

> <u>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 Refco Group Holdings, Inc</u>.

(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.

C. Collins, Mayer Brown and Refco Conceal the Uncollectible Receivable Through a Series of Blatantly Fraudulent "Round Trip" Loan Transactions

63. In order to avoid the severe repercussions that would result if Refco revealed that RGHI, a company co-owned by its current and former CEOs, owed hundreds of millions of dollars to the Company, Collins, Mayer Brown, Bennett and others designed and participated in several sham transactions designed to conceal the existence of the receivable. Beginning in 2000 and continuing through 2005, Collins and Mayer Brown participated in designing and carrying out a series of sham "loan" transactions at the end of Refco's financial reporting periods to temporarily pay down the receivable owed to Refco from RGHI and replace it with receivables purportedly owed by third-party customers. Mayer Brown was directly involved in no less than seventeen of these sham transactions, sixteen of which were timed to occur within a few days bracketing the ends of Refco's financial periods. The scheme was designed to, and did, allow Refco to issue materially false and misleading financial statements, including financial statements that were provided to investors.

64. 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. 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 a number of 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 these third parties and RGHI. RGHI then used the proceeds from the Refco-guaranteed "loans" to temporarily pay off the uncollectible receivables it owed to Refco, with neither the uncollectible receivable, the related-party transactions, nor the Refco guarantee being disclosed to investors. 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. 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.

65. Mayer Brown attorneys, including Collins, were directly involved in every facet of the sham loan transactions between 2000 and 2005. Specifically, and as set forth in the Amended Class Complaint and below, Mayer Brown attorneys were directly involved in negotiating the terms of the loans, drafting the documents relating to the loans, transmitting the documents to the participants, making certain changes to the documents, 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.

1. <u>The February 2000 Transactions</u>

66. Mayer Brown's involvement in the round trip loan transactions began no later than February 2000, when Collins and Monk directly participated in the design, negotiation and documentation of three separate sham loan transactions. As with each of the round trip loan transactions detailed herein, these three transactions lacked any legitimate business purpose and

were designed solely to allow Refco to fraudulently conceal $310 million worth of related-party debt owed by RGHI to Refco.

67. The first of these sham loan transactions involved a $150 million loan between Refco Capital, RGHI and an entity called CIM Ventures, Inc. ("CIM Ventures"). CIM Ventures is a subsidiary of Ingram Micro, Inc. ("Ingram Micro"), a distributor of information technology products based in California. According to the Examiner's Report, on February 1, 2000, Collins was contacted by David Weaver, then Chief Administrative Officer of Refco, and discussed with Weaver a transaction involving "back-to-back" loans among these entities.

68. A set of handwritten notes dated February 1, 2000, prepared by Collins and made public in connection with the Examiner's Report, make it clear that Collins and Mayer Brown were aware of the nature, structure and timing of the loan between CIM Ventures, Refco Capital and RGHI as of that date. For instance, the handwritten notes state that the principal amount of the loans would be $150 million. The notes also make clear that Collins 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." The handwritten notes also state that there would be a "15 basis point spread/fee" paid to CIM Ventures on the loans. Finally, the notes expressly acknowledge that the loan would be of "one month" duration and would bracket the end of Refco's fiscal year end, "Feb 15 – March 15."

69. According to the Examiner's Report, during the weeks following February 1, 2000, Collins and Monk participated in drafting, editing and reviewing the documentation for the round trip loans with CIM Ventures. These documents included the specific loan documents as well as guarantees by Refco of RGHI's obligation to repay CIM Ventures, and an indemnification agreement between Refco and CIM Ventures. On or about February 22, 2000,

James F. Ricketts, an officer of Ingram Micro and CIM Ventures, sent a cover letter attaching signature pages to Monk that described the nature of the transaction:

> 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.

70. A March 10, 2000 letter from Monk to James F. Ricketts, an officer of Ingram Micro, 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 is marked "paid in full" and signed on behalf of Refco Capital by Mayer Brown attorney Monk as Refco Capital's "authorized agent."

71. On or about March 9, 2000, after the close of Refco's financial year end, the round trip loans were unwound and the net profit was transferred to CIM Ventures' bank account.

72. The second transaction undertaken with the direct and active participation of Collins and Mayer Brown during February 2000 was a similarly structured $110 million round trip "loan" between Refco Capital, RGHI and an entity called CS Land Management LLC ("CS Land"). This transaction was structured substantially identically to the transaction with CIM Ventures, with the loan being initiated on February 25, 2000 and unwound on March 3, 2000. 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.

73. The third transaction involved an essentially identical $50 million round trip loan with hedge fund manager EMF Financial Products, LLC ("EMF Financial"). Like the CS Land transaction, this $50 million round trip loan was made on February 25, 2000 and unwound on March 3, 2000. According to the Examiner's Report, the documents for the sham transactions were drafted by Mayer Brown attorney Monk.

2. <u>The February 2001 Transactions</u>

74. Collins and Mayer Brown continued their active involvement in a series of round trip loans conducted in February and March 2001, which were designed to conceal approximately $450 million in uncollectible debt owed by RGHI to Refco. This was achieved by structuring two transactions essentially identical to the transactions with CIM Ventures, EMF Financial and CS Land discussed above.

75. First, Mayer Brown attorneys Collins and Monk drafted the documentation and were involved in negotiating the terms of a $250 million sham loan transaction between CIM Ventures, Refco Capital and RGHI, that was entered into on February 23, 2001 and unwound on March 6, 2001. Mayer Brown's involvement in this transaction was described in the Amended Class Complaint.

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77. As set forth in the Examiner's Report, in connection with this transaction, CIM Ventures, through its parent Ingram Micro, sent Collins a letter nearly identical to the letter it sent to Monk in connection with the previous transaction. This letter, dated February 16, 2001, stated that "per the arrangements made with Bob Monk . . .":

> 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.

78. According to the Examiner's Report, this letter was addressed to Collins because Monk had advised CIM Ventures that Monk was leaving Mayer Brown and that Collins would assume responsibility for the loans. When the $250 million sham transaction was unwound, the promissory note, marked "Paid in full," was sent to CIM Ventures, with a copy to Collins.

79. Second, as described in the Amended Class Complaint, Mayer Brown was involved in documenting certain round trip loans involving an entity called Delta Flyer. It is now clear that Collins himself reviewed and edited the documentation and was involved in negotiating the terms of a $200 million sham loan transaction among Delta Flyer Fund, LLC ("Delta Flyer") (a subsidiary of EMF Financial), Refco Capital and RGHI, which was entered into on February 26, 2001 and unwound on March 2, 2001.

80. As set forth in the Amended Class Complaint, Lead Plaintiffs previously obtained and reviewed a February 26, 2002 memorandum from Mayer Brown attorney Koury to Customer X that accompanied certain transaction documents sent to Customer X in February 2002 (discussed below). In an apparent "cut and paste" error by Mayer Brown, this memorandum mistakenly identified one of the deal documents (a promissory note) as being "from [Customer X] to Delta."

81. Documents made public in connection with the Examiner's Report have confirmed the allegations contained in the Amended Class Complaint that Delta Flyer was involved in the fraudulent round trip loan transactions and that those transaction documents were negotiated and drafted by Collins and Mayer Brown. For instance, a 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.

82. According to the Examiner's report, the CFO at Delta Flyer stated that Delta Flyer opened an account at Refco Capital shortly before the 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 $250 million loan it agreed to make to RGHI, and 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.

3. The February 2002 Transactions

83. The fraudulent round trip loans involving Customer X were described in detail in the Amended Class Complaint. These allegations were based on Lead Plaintiffs' review of numerous loan agreements, guarantees, correspondence and other documents relating to those transactions, as well as Lead Counsels' interviews with Principal A, the founder and principal of Customer X, who has direct knowledge of the origin and structure of approximately ten transactions involving Refco and Customer X between February 2002 and August 2005.

84. As set forth in the Amended Class Complaint, in early February 2002, Principal A received a telephone call from Peter McCarthy, an executive officer of Refco. McCarthy asked Principal A whether Customer X would be interested in participating in a "trade." Shortly thereafter, Principal A spoke to another executive at Refco, who explained that the proposed "trade" would consist of 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. The Refco executive explained that Customer X would be entitled to a profit on the loans.

85. In order to obtain more information on the structure and terms of the loan, the Refco executive instructed Principal A to speak to Mayer Brown. Principal A informed Lead Counsel he spoke to Mayer Brown attorney Koury, who explained in detail the structure of the transactions and provided Customer X with a set of transaction documents that included loan agreements and promissory notes. On or about February 25, 2002, Mayer Brown also provided Customer X with a side letter that provided that Refco Group "unconditionally and absolutely gurantee[d]" to Customer X "the prompt and complete payment and performance" of RGHI's liabilities to Customer X. This guarantee was signed by Bennett, as President and CEO of Refco Group.

86. 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.

87. The first such transaction took place between February 25, 2002 and March 4, 2002. This transaction is memorialized in, among other things, the documents enclosed with a February 26, 2002 cover memorandum (the "February 26, 2002 Memorandum") from Koury to Principal A. Enclosed with the memorandum were transaction documents prepared by Mayer Brown pertaining to three components of an integrated transaction between Refco and Customer X.

88. *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.

89. The purpose and function of this loan to Customer X was plain from the face of the loan document. It contained an affirmative "use of proceeds" covenant that obligated Customer X to "[u]se the Loan proceeds only for funding a corresponding loan to Refco Group Holdings, Inc."

90. *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.

91. 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.

92. The Customer X/RGHI Loan Agreement also defined RGHI as one of the "Refco Parties" and provided that legal notices to RGHI were to be sent to Refco Capital (care of Refco

Capital's then-Chief Administrative Officer). Bennett signed the Customer X/RGHI Loan Agreement on behalf of RGHI.

93. *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.

94. 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.

95. 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.

96. 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.

97. Collins and Mayer Brown were also involved in two additional round trip loans made in February/March 2002. The first was between Refco Capital and Beckenham Trading Company, Inc. ("Beckenham"), a hedge fund specializing in futures and foreign currency trading. This transaction was for $125 million and, according to the Examiner's Report, it was identical to the other round trip loans except that the transaction documents—prepared by Mayer Brown attorney Koury—provided for a fixed interest rate "spread" that was not based on LIBOR but was specified in the transaction documents.

98. Similarly, 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 other than the fact that, like the Beckenham loan, the transaction documents set forth a specific interest rate "spread" rather than being based on the LIBOR rate. Mayer Brown attorney Koury was involved in these loans and sent the final executed transaction documents to Delta Flyer.

99. Collins and Mayer Brown were also directly involved in a contemplated—but never executed—round trip loan transaction with Ingram Micro in February 2002. The termination of this transaction confirms that Collins and Mayer Brown knew or recklessly disregarded that these transactions were fraudulent. In January 2002, Ingram Micro officer 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.

100. The increasing awareness of securities fraud in the wake of the highly-publicized Enron scandal, however, apparently caused Ingram Micro's CFO to have second thoughts about

proceeding with the transaction. According to the Examiner's Report, the CFO notified Ricketts that Ingram Micro should not do the transaction, stating in a January 30, 2002 email that:

> [I] wouldn't take the chance at this point . . . given the environment [in the wake of Enron] 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.)

101. On January 30, 2002, Ricketts sent an email to executives at Refco stating that Ingram Micro 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 Micro 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 disclosures 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. <u>The Transactions From February 2003 Through August 2005</u>

102. The following summarizes additional sham round-trip loan transactions that Refco engaged in with certain third parties in order to conceal the existence of the debt owed by RGHI and to render Refco's financial statements materially false and misleading. Each of these transactions was essentially identical in nature, purpose and structure to the transactions described above.

(a) 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 a different interest rate.

(b) Between February 21, 2003 and March 4, 2003, Refco engaged in a $500 million round-trip loan transaction with Customer X. Mayer Brown handled the documentation for this loan, which was identical in nature, purpose and structure to the round trip loan among Customer X, Refco Capital, and RGHI the previous year. Bennett signed the loan documents on behalf of Refco.

(c) Between February 20, 2004 and March 4, 2004, Refco engaged in a $720 million round-trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loan among Customer X, Refco Capital, and RGHI the previous year. Bennett signed the loan documents on behalf of Refco.

(d) Between May 27, 2004 and June 7, 2004, Refco engaged in a $700 million round-trip loan transaction with Customer X. Mayer Brown attorney Koury handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco. This round trip loan occurred only one month before the Offering Memorandum was disseminated to potential investors in the 144A Bonds.

(e) Between August 25, 2004 and September 7, 2004, Refco engaged in a $485 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco.

(f) Between November 26, 2004 and December 3, 2004, Refco engaged in a $545 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco.

(g) Between December 30, 2004 and January 5, 2005, Refco engaged in a $550 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco.

(h) Between February 23, 2005 and March 8, 2005, Refco engaged in a $345 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco. This round trip loan occurred only one month before the final Bond Registration Statement was filed with the SEC and became effective.

(i) Between May 25, 2005 and June 6, 2005, Refco engaged in a $450 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Mayer Brown attorney Collins received copies of the documents on May 20, 2005. Bennett signed the loan documents on behalf of Refco. This round trip loan occurred only two months before Refco's IPO.

(j) Between August 26, 2005 and September 6, 2005, Refco engaged in a $420 million round trip loan transaction with Customer X. Mayer Brown handled the documentation for this transaction, which was identical in nature, purpose and structure to the round trip loans among these entities conducted in prior periods. Bennett signed the loan documents on behalf of Refco.

5. <u>Summary of Transactions</u>

103. The chart below sets forth a summary of the transactions that Mayer Brown was directly involved in, as described above.

"Loan" Date	**Financial Period End**	**Repayment Date**	**Total "Loan" Amount**
February 25, 2000(CS) February 25, 2000(EM) February 25, 2000(I)	February 28, 2000	March 3, 2000 ($110 Million) March 3, 2000 ($50 Million) March 9, 2000 ($150 Million)	$310 Million
February 23, 2001(I) February 26, 2001(DF)	February 28, 2001	March 6, 2001 ($250 Million) March 2, 2001 ($200 Million)	$450 Million
February 25, 2002(X) February 25, 2002(DF) February 25, 2002(BH)	February 28, 2002	March 4, 2002 ($325 Million) March 4, 2002 ($175 Million) March 4, 2002 ($125 Million)	$625 Million

"Loan" Date	Financial Period End	Repayment Date	Total "Loan" Amount
February 21, 2003[(X)] February 25, 2003[(DF)]	February 28, 2003	March 4, 2003 ($500 Million) March 4, 2003 ($150 Million)	$650 Million
February 20, 2004[(X)]	February 29, 2004	March 4, 2004 ($720 Million)	$720 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 29, 2005	March 8, 2005 ($345 Million)	$345 Million
May 25, 2005[(X)]	May 31, 2005	June 6, 2005 ($450 Million)	$450 Million
August 26, 2005[(X)]	August 30, 2005	Sept. 6, 2005 ($420 Million)	$420 Million

(X) Denotes transaction involving Customer X
(I) Denotes transaction involving CM Ventures, a subsidiary of Ingram Micro
(CS) Denotes transaction involving CS Land Management
(EM) Denotes transaction involving EMF Core Fund
(DF) Denotes transaction involving Delta Flyer
(BH) Denotes transaction involving Beckenham Trading

104. Collins and Mayer Brown had knowledge of all of these transactions. As observed by the Examiner, these round trip transactions were described in summary fashion in the monthly billing statements Collins prepared and/or reviewed and sent to Refco.

105. In addition to the round trip loans referenced above, Refco engaged in "back-to-back" loan transactions with BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft ("BAWAG"). The BAWAG transactions were not documented by Mayer Brown.

6. **Material Impact on Financial Statements**

106. In addition to undermining the validity of the descriptions of the Company's business model, historical performance, and operational parameters, the financial manipulations involving Collins and Mayer Brown (including those that took place prior to February 2002) rendered the Company's financial results – which were reported in documents that Collins and Mayer Brown reviewed and edited – materially false and misleading. These manipulations involved huge related-party transactions between various Refco entities and RGHI, which was owned and controlled by Bennett and held Bennett's equity stake in the Company, as well as enormous guarantees by Refco Group in favor of RGHI's counterparties. 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.

107. The following chart details the material impact that the financial manipulations involving Collins and Mayer Brown 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	$ (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)

108. The following chart details the material impact that the financial manipulation involving Collins and Mayer Brown had on the Company's pre-tax income, net income, and members' equity on a quarterly basis for fiscal year 2005 and the quarter 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)

109. The following chart details the material impact that the financial manipulations involving Collins and Mayer Brown 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	(428.0)
2005	283.9	(28.3)

110. The following chart details the material impact that the financial manipulations involving Collins and Mayer Brown 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)

111. 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.

VII. COLLINS AND MAYER BROWN WORK WITH REFCO'S INSIDERS IN THEIR EFFORTS TO SELL THE COMPANY

112. The fraudulent scheme described above was designed to allow Refco (with the assistance of several Wall Street investment banks) to sell their interests in the Company to unsuspecting investors at inflated prices. Collins and Mayer Brown were closely involved in the efforts of the Company's insiders to sell Refco.

113. The Examiner concluded that by no later than February 6, 2002, Mayer Brown knew that the ultimate goal of Bennett and other senior Refco executives 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, it was possible that Collins was aware of the plan to sell the Company as early as May 1999. Indeed, in 1998, Mayer Brown represented Refco in a transaction whereby BAWAG purchased 10% of the Company for $95 million and paid an additional $85 million for an option to purchase an additional 10%.

A. <u>The LBO</u>

114. 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 Thomas H. Lee Entities to enter a transaction whereby a large portion of the Company would be sold to public investors. On June 8, 2004, the Thomas H. Lee Entities 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, the Thomas H. Lee Entities acquired a 57% equity stake in Refco with the remaining 43% held by RGHI, which would be wholly-owned by Bennett (thus cashing out two co-owners, Tone Grant and BAWAG). 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." (Emphasis added.)

B. <u>The Bond Offering</u>

115. In order to raise funds necessary to cash out the existing equity holders and complete the LBO, Refco and the Thomas H. Lee Entities, with the participation of Mayer Brown, conducted a Bond Offering in August 2004 that raised $600 million from unsuspecting public investors. This Bond Offering was conducted in two steps that constituted a single plan of financing. In the first step, Refco sold unregistered Rule 144A Bonds to the Company's

underwriters, who then sold them to Qualified Institutional Buyers such as PIMCO. In the second step, Refco issued Registered Bonds pursuant to a Bond Registration Statement, and offered the holders of the 144A Bonds the opportunity to exchange their 144A Bonds for Registered Bonds.

116. The 144A Bonds were marketed to PIMCO and other members of the Class pursuant to an Offering Memorandum, which was first disseminated in or about July 2004. The Offering Memorandum described the terms of the Bonds, provided information concerning the Company's operations and finances, and contained Refco's financial statements for the fiscal years ended February 28, 2003 and February 28, 2004 and other statements regarding the Company's financial performance. As set forth in more detail below, the Offering Memorandum was materially false and misleading because, among other things, it failed to disclose either the existence of the multi-hundred million dollar receivable owed by RGHI to Refco, or the fraudulent round-trip "loan" transactions that Mayer Brown had worked on designing and documenting.

117. The Offering Memorandum states that Mayer Brown represented Refco Group in connection with the offering of the 144A Bonds. In that role, Mayer Brown was heavily involved in the process of issuing the 144A Bonds and preparing and disseminating an 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."

118. Mayer Brown attorneys, including Mayer Brown 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, including Lang and Best. 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 false and misleading statements and omitted to state facts that were needed to make it not misleading.

119. 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.

C. <u>The Bond Registration Statement</u>

120. As contemplated in the original Bond Offering, Refco consummated an exchange offer whereby investors could exchange their 144A Bonds for Registered Bonds. On October 12, 2004, Refco filed a Form S-4 Registration statement with the SEC, 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 Bond Registration Statement became effective, and Registered Bonds were

issued pursuant thereto, on or about April 13, 2005. The co-issuers of the Registered Bonds were Refco Group and its wholly-owned subsidiary, Refco Finance.

121. The Bond Registration Statement was copied verbatim in significant respects from the Offering Memorandum, which Mayer Brown, Collins, and other Mayer Brown attorneys had participated in drafting and reviewing. Additionally, as the Examiner notes, in October 2004, shortly before the initial Form S-4 was filed with the SEC, Collins billed time for a conversation with Bennett and another Refco executive regarding unspecified disclosure issues. Moreover, the SEC's comment letters on drafts of the Bond Registration Statement, and the Company's responses thereto, were regularly distributed to and reviewed by Collins.

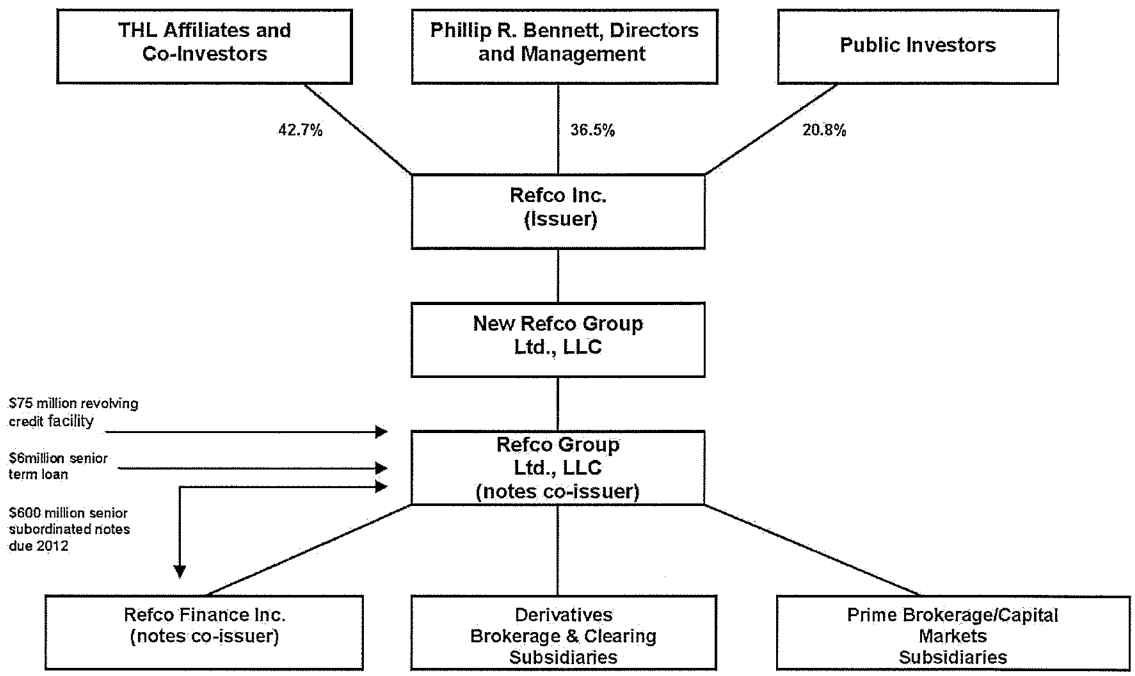
122. The Bond Registration Statement contained the Company's financial statements for the fiscal years ended February 28, 2003 and February 28, 2004. As described in more detail below, and as Collins and Mayer Brown knew, the Bond Registration Statement was materially false and misleading because, among other things, it failed to disclose either the existence of the multi-hundred million dollar receivable owed by RGHI to Refco, or the fraudulent round-trip "loan" transactions that Collins and Mayer Brown had worked on designing and documenting.

D. The August 2005 Initial Public Offering

123. With the consummation of the LBO and the successful Bond Offering in place, Refco's insiders (which now included the Thomas H. Lee Entities) were perfectly positioned to cash out by taking the fraud-ridden Company public through a lucrative initial public offering. With substantial involvement by Collins and Mayer Brown, 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.

124. 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 August 2005 IPO:



125. In the August 2005 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"). The August 2005 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.

126. The IPO Registration Statement includes the Company's audited financial statements for fiscal years 2003, 2004, and 2005. 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.

127. Collins and Mayer Brown 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 transaction. According to the Examiner's Report, Mayer Brown (through Collins) received and reviewed numerous drafts of the IPO Registration Statement.

128. As described in more detail below, and as Collins and Mayer Brown knew, the IPO Registration Statement was materially false and misleading because, among other things, it failed to disclose the either the existence of the multi-hundred million receivable owed by RGHI to Refco, or the fraudulent round-trip "loan" transactions in whose design and documentation Collins and Mayer Brown had participated.

VIII. MAYER BROWN, COLLINS, AND OTHER ATTORNEYS AT MAYER BROWN KNEW THAT THE FRAUDULENT SCHEME LACKED ANY LEGITIMATE BUSINESS PURPOSE AND WAS DESIGNED TO ALLOW REFCO TO ISSUE MATERIALLY FALSE AND MISLEADING FINANCIAL AND OTHER STATEMENTS

129. 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.

130. There is abundant direct evidence that Collins and Mayer Brown were knowing and key participants in the fraud at Refco. Numerous documents and other cogent evidence demonstrate that Collins and Mayer Brown, through numerous Mayer Brown employees, including Koury and Monk, were knowingly involved 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.

131. 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.

132. 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. As set forth in the Amended Class Complaint and the Superseding Indictment, 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 in ¶ 61, by no later than October 1999, Collins and Mayer Brown had knowledge 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.

133. By June 2002, as discussed above in ¶ 62, 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."

134. The knowledge of, and direct participation in, the fraudulent scheme described herein 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, 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 and were thus timed to occur in the days surrounding Refco's financial period ends. Among other things, their knowledge and/or reckless disregard of the fraudulent nature of these round trip loans is demonstrated by:

(a) Volume and Timing. Mayer Brown, through various employees including Koury and Monk, negotiated and drafted all of the documentation for ***seventeen*** sham loan transactions, each of which was inherently suspicious as it occurred repeatedly at Refco's financial year end or quarter end. Moreover, as these employees and Collins and Mayer Brown knew, the fraudulent loans, which were initially conducted on an annual basis, began to be conducted on a quarterly basis once Refco was required to file quarterly financial statements in connection with the anticipated Bond Offering.

(b) RGHI Had No Liquid Assets. Mayer Brown, Collins and various employees of Mayer Brown (including Koury and Monk) knew that RGHI was simply an off balance-sheet holding company that Bennett and others used to "park" their significant personal holdings of Refco stock. 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.

(c) Guarantee by Refco. Mayer Brown, Collins, and the Mayer Brown employees who participated in the documentation and design of the sham transactions (including Koury and Monk) knew that Refco executed a guarantee to assure the third-party customers that their loans to RGHI would be satisfied by Refco in the event that RGHI defaulted. This is additional evidence demonstrating that the loans were simply a sham designed to benefit Refco.

(d) Knowledge of Related-Party Nature ofTransactions. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew that RGHI and Refco were related parties. Indeed, Mayer Brown represented ***both*** RGHI and Refco in each of the transactions, a fact which confirms that the entities were related and that the loans between Refco and RGHI were not made at arms'-length. Collins, Koury, Monk and Mayer Brown further knew that related-party transactions must be disclosed and are viewed with suspicion because they often are conducted to manipulate financial results.

(e) No Economic Risk. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew or recklessly disregarded that the transactions were fraudulent based on the fact that they involved ***no economic risk*** to the third parties involved, yet Refco paid these parties "interest" on the "loans," which amounted to pure profit.

(f) Bennett Involved on Both Sides. 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 guarantee on behalf of Refco and the loan documents on behalf of RGHI.

(g) Transactions Lacked Any Legitimate Purpose. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) also knew that the transactions lacked any legitimate business purpose. 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. In addition to the facts alleged above (which make it obvious that the nature, structure, and purpose of the loans was illegitimate), Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew the following facts demonstrating that the transactions lacked any legitimate purpose and were designed solely to allow Refco to misstate its financial results:

(i) For the majority of the 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.

(ii) The net interest to the third-party customers was paid by Refco Capital, even though this amount was owed by RGHI

(iii) 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."

(iv) According to the Examiner's Report, Mayer Brown witnesses interviewed by the Examiner stated that they were not aware of any business purpose for the transactions at the time they were conducted, nor could they articulate one at the time of their interviews.

135. The Examiner's Report concludes that "there is significant evidence" that Mayer Brown "knew or should have known" that the round trip loans "were fraudulent and undertaken for the purpose of manipulating Refco's financial statements."

136. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew that the round-trip loans straddled Refco's financial periods. As the long-time "go-to" attorneys for the Company, Collins and

Mayer Brown was aware of the requirement that Refco file financial statements and also knew that Refco required audited financial statements in connection with its business operations. For instance, Collins and Mayer Brown received multiple requests for "audit letters" to be sent to Refco's auditors each year in February and, following the Bond Offering, for accounting reviews at the end of each financial reporting quarter. According to the Examiner's Report, (a) "throughout the course of its representation of Refco, Mayer Brown prepared responses to various requests it received for audit letter responses from Refco"; (b) "Collins sometimes spoke to Bennett, Trosten and other Refco representatives in connection with preparing audit letter responses, and, on at least two occasions, reviewed and commented upon one or more footnotes to be placed in Refco's financial statements"; and (c) "Mayer Brown occasionally reviewed or referred to Refco's audited financial statements and sent copies of those statements to others."

137. Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) were also aware that Refco needed financial statements in order to comply with the covenants contained in certain loan and note agreements that Mayer Brown drafted for Refco. These loan agreements required Refco to provide financial statements "as soon as available and in any event within 60 days after the end of each quarterly fiscal period" and "as soon as available and in any event within 120 days after the close of each fiscal year of [Refco]." These loan agreements were drafted by Mayer Brown, and Mayer Brown maintained execution copies of the documents at its offices.

138. These same loan and note documents contained covenants prohibiting Refco from incurring additional indebtedness beyond set limits and in certain instances expressly prohibited the Company from entering into any guaranties. For instance, Refco Group was a party to a Note Agreement dated June 29, 2000, which 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." This Note Agreement was drafted by Mayer Brown and contained in Mayer Brown's files at the end of the Class Period.

139. Additional evidence Mayer Brown, Collins, and the other Mayer Brown employees who worked on the round trip transactions (including Koury and Monk) knew or recklessly disregarded that the only purpose of the transactions was to manipulate Refco's financial appearance is found in the fact that they knew that Refco's executives had strong incentives to manipulate the Company's financial statements. For instance, Mayer Brown, Collins, and the other Mayer Brown employees were aware of the following:

(a) <u>IPO Endgame.</u> In late 2003, Collins learned that Bennett desired to eventually undertake an IPO and sell the Company to public investors. Specifically, Collins learned of the intent to conduct an IPO through discussions with CSFB, which had been hired by Bennett to explore the possibility.

(b) <u>Profit Participation.</u> Mayer Brown was involved in drafting a profits participation plan for certain key Refco executives. As described in the Amended Class Complaint, this plan enabled certain Refco insiders to reap at least $29 million in profits from a sale of the Company. The plan was prepared by Mayer Brown and implemented on or about January 1, 2002. As the Examiner stated, "under the plan, the senior executives of Refco would be compensated upon the annual net profits of Refco, and would also receive a substantial bonus if Refco were sold for more than a certain price."

(c) Trosten Severance Payment. As alleged in the Amended Class Complaint, within a few months after the LBO, Refco's former CFO, 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 as CFO for only three years. This severance payment was not contemporaneously disclosed to the public, but was admitted to by Trosten in sworn testimony he gave to an arbitration panel in the Summer of 2005. Mayer Brown represented Trosten at that arbitration. The huge severance payment was far greater than Trosten's annual compensation of approximately $3 million in salary and bonuses for fiscal year 2004 and was grossly disproportionate to his level of experience and expertise. It was also directly contrary to the severance package disclosed in the Offering Memorandum, which would have entitled Trosten to only eighteen months of base salary.

140. 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 its 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.

IX. MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS

A. The False and Misleading Statements in the Offering Memorandum

141. 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.

1. The Financial Statements in the Offering Memorandum Were Materially False and Misleading

142. The Offering Memorandum, which identified Mayer Brown as counsel to Refco and which Mayer Brown, Collins, and other Mayer Brown attorneys reviewed and edited, 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.

143. Refco Group's Consolidated Balance Sheets 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.

144. Further, Refco Group's Consolidated Statements of Income 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.

145. The Offering Memorandum also 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.

146. 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.

147. 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.

148. 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.

149. 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 operated 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."

150. As Collins and Mayer Brown knew or recklessly disregarded, the statements set forth above were materially untrue because Refco failed to disclose the existence of hundreds of millions of dollars of uncollectible receivables, related-party transactions, and guarantees. 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.

2. The Description of Customer Receivables and Related-Party Transactions in the Offering Memorandum Was Materially False and Misleading

151. 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.

152. 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.

153. 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.

154. 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 and RGHI, 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 concealing from investors. 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 sham loan transactions involving Collins and Mayer Brown.

155. Further, the Offering Memorandum falsely 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 more round trip transactions arranged by Collins and Mayer Brown 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* ¶ 176 below), the inclusion of amounts due from RGHI in "receivables from customers" was inappropriate and misleading. 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 receivables, that the descriptions of Refco Group's related party transactions and "receivables from customers" were materially false and misleading.

3. The Offering Memorandum Misrepresented the Reasons for the Company's Purported Success

156. 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.

157. 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.

158. 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.

4. The Offering Memorandum Misrepresented the Company's Ability to Access the Cash It Needed to Service Its Debt

159. 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.)

160. 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.)

161. 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.

162. 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.

163. Accordingly, the Company and those Defendants who prepared the Offering Memorandum, including Mayer Brown, 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.

164. 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 Refco Group Guaranty given to Customer X. 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.

5. The Offering Memorandum Misrepresented That the Company Had Taken Adequate Steps to Protect Itself From the Risk of Customer Defaults

165. 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.

166. To allay potential investors' fears that these credit risks would prevent the Company from making required payments on the Bonds, the Offering Memorandum touted the steps the Company had purportedly taken to minimize the risk of customer default. In fact, the

Offering Memorandum identified Refco's "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. ... 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.

167. 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.

168. As Collins and Mayer Brown knew or recklessly disregarded, 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 that were not disclosed to the investing public, 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, 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.

6. The Offering Memorandum Misrepresented That the Company Maintained Excess Regulatory Capital

169. 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.

170. 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.

171. 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 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 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.

B. False and Misleading Statements in the Bond Registration Statement

172. 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 Mayer Brown, Collins, and the other Mayer Brown attorneys who participated in the preparation of the Offering Memorandum, and thus they knew or recklessly disregarded when they were preparing the Offering Memorandum that they were also preparing, reviewing and revising statements which would be repeated in the Bond Registration Statement.

173. The Bond Registration Statement contained the Company's audited financial statements for fiscal years 2003 and 2004. 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.

174. 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.

175. The audited financial statements in the amendments to the Bond Registration Statement 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 a written guarantee, signed by Bennett, assuring Customer X that Refco Group would unconditionally repay Refco Holding's various loans from Customer X 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.

176. 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 amendment 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 a comment letter from the SEC 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 Company had tried to deceive investors by mischaracterizing the RGHI receivable.

177. As Mayer Brown and Collins knew, 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 they failed to disclose the existence and full extent of the related-party transactions and the related-party indebtedness between the Company and RGHI discussed herein. Further, the Bond Registration Statement failed to disclose the Refco Group guaranty to Customer X 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 round trip transactions arranged by Collins and Mayer Brown to facilitate that "payment" (which was immediately unwound a few days later.)

178. The Notes To Consolidated Financial Statements in the Bond Registration Statement, as in the Offering Memorandum, stated

> 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.

179. As Collins and Mayer Brown knew or recklessly disregarded, 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 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.

C. <u>False and Misleading Statements in the IPO Registration Statement</u>

1. <u>The Financial Statements in the IPO Registration Statement Were Materially False and Misleading</u>

180. The IPO Registration Statement, which identified Mayer Brown as counsel to Refco in connection with the offering and which Collins and Mayer Brown reviewed and edited, 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. On July 27, 2005, a story in The Daily Deal discussed the IPO and stated that Collins and Mayer Brown were providing legal advice to the Company in connection with the IPO.

181. Refco's Consolidated Balance Sheets 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.

182. 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.

183. The IPO Registration Statement also 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

184. 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.

185. 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.

186. 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.

187. 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.

188. 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."

189. In addition, the IPO Registration Statement includes 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.

190. As Collins and Mayer Brown knew or recklessly disregarded, these statements were materially untrue because Refco failed to disclose the existence of hundreds of millions of dollars worth of uncollectible receivables 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. As discussed in ¶ 205 below, 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.

2. The Description of Customer Receivables and Related-Party Transactions in the IPO Registration Statement Was Materially False and Misleading

191. 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 stated:

> **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.)

192. 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.)

193. 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.

194. These statements contained untrue statements and omissions of material fact because they failed to disclose the existence of the related-party transactions, the related-party indebtedness between the Company and RGHI. 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. The IPO Registration

Statement also failed to disclose the fact 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 concealing from investors. 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 concealed through sham loan transactions involving Mayer Brown.

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

195. 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.

196. 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.

197. 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.

4. The IPO Registration Statement Misrepresented That the Company Maintained Excess Regulatory Capital

198. 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.

199. 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."

200. 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 . . . ."

201. These statements contained untrue statements of material fact because the Company's reported regulatory capital was overstated and the Company failed to to disclose that Refco had given Customer X a written guarantee, signed by Bennett, assuring Customer X that Refco 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.

X. THE TRUTH IS REVEALED AND REFCO FILES FOR BANKRUPTCY

202. Throughout the Class Period, the prices of the Company's securities were artificially inflated as a direct result of the above-described misrepresentations and omissions regarding the Company, including the misrepresentations about its financial condition and results of operations.

203. The Company's financial condition and results, including the collectability 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 August 2005 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.

204. When the truth about the Company was revealed, the inflation that had been caused by the misrepresentations and omissions was eliminated from the price of the Company's securities, causing significant losses to Plaintiffs and the other Class members.

205. 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 October 10, 2005, when Refco issued a press release 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.

206. 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).

207. In addition, the October 10, 2005 press release disclosed that the Company's Board of Directors had essentially fired 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."

208. The market's reaction to this startling announcement – just two months after Refco had sold hundreds of millions of dollars 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.

209. 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 a Refco executive 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." Another Refco executive was quoted as stating, "We continue to see strong momentum across our businesses with record derivative contract and foreign exchange volume in the quarter."

210. 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.

211. 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%.

212. 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.

213. 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 Markets, Ltd. to protect the value of the enterprise.

214. 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.

215. 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.

216. 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."

217. 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. Collins' and Mayer Brown's conduct, as alleged herein, proximately caused foreseeable losses to Plaintiffs and the other members of the Class.

COUNT ONE

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

218. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

219. 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.

220. 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.

221. 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.

222. 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.

223. 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.

224. 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.

225. 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.

226. 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.

227. 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 TWO

Pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder on Behalf of Plaintiffs and all Class Members

228. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

229. 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 Collins and Mayer Brown.

230. As alleged herein, throughout the Class Period, Refco issued materially false and misleading financial statements that were included in the Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement. The Offering Memorandum, the Bond Registration Statement, and the IPO Registration Statement all contained materially false and misleading statements of fact as detailed above. As alleged above, Collins, Mayer Brown, and other partners and employees of Mayer Brown drafted portions of those documents, and reviewed and commented on drafts of these documents in their entirety before they were publicly disseminated. Collins, Mayer Brown, and other partners and employees of Mayer Brown who drafted, reviewed, and commented on these documents knew or recklessly disregarded that these documents were materially false and misleading yet allowed the issuance of the documents as well as the identification of Mayer Brown as counsel to Refco on the Offering Memorandum and the IPO Registration Statement.

231. Mayer Brown was identified in such documents as Refco's counsel, and readers of such documents understood that Mayer Brown was the law firm responsible for preparing those documents.

232. The statements alleged herein were made 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. The 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.

233. Collins, Mayer Brown, and other partners and employees of Mayer Brown are responsible for making the statements and omissions alleged herein, by virtue of having prepared, reviewed and approved documents which contained untrue statements of material fact and/or omitted facts necessary to make the statements therein not misleading.

234. 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(b), including without limitation Collins, under principles of *respondeat superior*. The acts alleged herein by Collins 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.

235. Collins, Mayer Brown and other Mayer Brown partners and employees who prepared, reviewed and commented on the documents containing the false and misleading statements and omissions at issue in this Claim acted with scienter and violated Section 10(b) and Rule 10b-5(b) in that they 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.

236. The false statements and omissions were made in connection with the purchase or sale of the Company's securities.

237. In ignorance of the false and misleading nature of the statements and omissions by Collins, Mayer Brown, Koury, Monk, and other partners and employees of Mayer Brown, 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.

238. The market price for Refco securities declined materially upon the public disclosure of the facts that had previously been misrepresented or omitted, as described above.

239. 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 THREE

Pursuant to Section 20(a) of the Exchange Act 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)

240. Plaintiffs repeat and reallege each of the allegations set forth above as if fully set forth herein.

241. 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.

242. 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.

243. 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.

244. 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.

245. 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 had the power to influence and/or control their activities as alleged herein.

246. 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.

247. 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.

248. 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.

249. 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.

JURY DEMAND

250. 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 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 Collins and Mayer Brown for all damages sustained as a result of Collins' and Mayer Brown's wrongdoing, and against Mayer Brown for all damages sustained as a result of the wrongdoing of persons controlled by Mayer Brown and/or for whose conduct Mayer Brown is responsible pursuant to principles of *respondeat superior*, in an amount to be proven at trial, together with interest thereon;

C. Awarding prejudgment interest and/or opportunity cost damages in favor of Plaintiffs and the other members of the Class;

D. Awarding Plaintiffs and the Class the fees and expenses incurred in this action, including attorneys' fees and expert fees; and

E. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 1, 2007

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: ______________________
Max W. Berger (MB-5010)
John P. Coffey (JC-3832)
Salvatore J. Graziano (SG-6854)
John C. Browne (JB-0391)
Jonathan Harris (JH-3047)
Jeremy P. Robinson
David H. Webber (DW-3876)
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

GRANT & EISENHOFER P.A.

By: ______________________
Stuart M. Grant (SG-8157)
James J. Sabella (JS-5454)
Jonathan D. Margolis (JM-1128)
485 Lexington Avenue, 29th Floor
New York, NY 10017
Telephone: (646) 722-8500
Facsimile: (646) 722-8501

- and -

Megan D. McIntyre
Jeff A. Almeida
Peter B. Andrews
Christine M. Mackintosh
Chase Manhattan Centre
1201 North Market Street
Wilmington, DE 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100

Attorneys for Plaintiffs RH Capital Associates LLC, Pacific Investment Management Company LLC and PIMCO Funds: Pacific Investment Management Series – PIMCO High Yield Fund, and Co-Lead Counsel for the Putative Class