

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: 05 Civ. 8626 (GEL)  
In re REFCO, INC. SECURITIES LITIGATION :  
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**ORDER PRELIMINARILY APPROVING  
PROPOSED SETTLEMENT WITH  
SANDLER O'NEILL & PARTNERS L.P.**

WHEREAS, by Order dated February 8, 2006, Pacific Investment Management Company LLC and RH Capital Associates LLC were appointed by this Court to serve as Lead Plaintiffs on behalf of the Class in *In re Refco, Inc. Securities Litigation*, No. 05 Civ. 8626 (GEL) (S.D.N.Y.) (the "Action");

WHEREAS, the parties have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the settlement ("Settlement") of the Action in accordance with the Stipulation and Agreement of Settlement Between Lead Plaintiffs and Defendant Sandler O'Neill & Partners, L.P. dated October \_\_, 2008 (the "Stipulation"), which sets forth the terms and conditions for a proposed Settlement and for the release of certain claims and the dismissal of the Action against Sandler O'Neill & Partners, L.P. ("Sandler O'Neill") with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has not certified the Action as a class action, but is being asked to preliminarily certify a settlement class, for purposes of this Settlement only, consisting of all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the period July 1, 2004 through and including October 17, 2005 (the "Class Period"), (the "Settlement Class");

WHEREAS, Lead Plaintiffs' proposed definition of the Settlement Class excludes (i) Refco; (ii) the defendants to the Action (the "Defendants"); (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion.

WHEREAS, the Court having read and considered (1) the Second Amended Consolidated Class Action Complaint, filed in this Action on December 3, 2007; (2) Lead Plaintiffs' motion for preliminary approval of the Settlement, and the papers filed in support thereof; and (3) the Stipulation between Lead Plaintiffs and Sandler O'Neill;

WHEREAS, the Court finds, upon a preliminary evaluation, that the proposed Settlement falls within the range of possible approval criteria, as it provides a beneficial result for the Settlement Class and appears to be the product of good faith, informed and non-collusive negotiations between experienced and able counsel for the settling parties; and

WHEREAS, unless otherwise stated herein, all defined terms contained herein shall have the same meanings set forth in the Stipulation.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Findings** – For purposes of the Settlement of this Action as against Sandler O'Neill (and only for such purposes, and without an adjudication of the merits), the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United

States Constitution, the Rules of the Court and any other applicable law have been met as to the Settlement Class described in the paragraphs above in that:

- a. The identities of the Settlement Class members are likely to be ascertainable from records kept by Refco and/or its agents, and from other objective criteria, and the Settlement Class members are so numerous that their joinder before the Court would be impracticable.
- b. Lead Plaintiffs have alleged questions of fact and law common to the Settlement Class.
- c. The claims of the Lead Plaintiffs in the Action are typical of the claims of the proposed Settlement Class.
- d. Lead Plaintiffs will fairly and adequately protect the interest of the proposed Settlement Class in that (i) the interests of Lead Plaintiffs and the nature of their alleged claims are consistent with those of the members of the Settlement Class, (ii) there appear to be no conflicts between or among the Lead Plaintiffs and the Settlement Class, (iii) Lead Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of the Action, and (iv) Lead Plaintiffs and the Settlement Class members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complex securities fraud class actions.
- e. For settlement purposes in the Action as against Sandler O'Neill, questions of law or fact common to members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class and that a class-action resolution in the manner proposed by the Stipulation would be superior to other available methods for a fair and efficient adjudication of the Action. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of the Settlement Class members in individually controlling the prosecution or defense of separate actions, (ii) the impracticability or inefficiency of prosecuting or defending separate actions, (iii) the extent and nature of any litigation concerning these claims already commenced, and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

2. **Preliminary Class Certification for Settlement Purposes With Sandler**

**O'Neill** – Based on the findings set out in paragraph 1 above, the Court preliminarily certifies the following Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and

(b)(3) in the Action: all persons and entities that purchased or otherwise acquired Refco Group Ltd., LLC/Refco Finance Inc. 9% Senior Subordinated Notes due 2012 (CUSIP Nos. 75866HAA5 and/or 75866HAC1) and/or common stock of Refco (CUSIP No. 75866G109) during the Class Period and were damaged thereby. The Settlement Class excludes (i) Refco; (ii) the Defendants; (iii) any person or entity who was a partner, executive officer, director, controlling person, subsidiary, or affiliate of Refco or any Defendant during the Class Period; (iv) members of the Defendants' immediate families; (v) entities in which Refco or any Defendant has a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing excluded persons or entities. Also excluded from the Settlement Class is any person or entity who or which properly excludes himself, herself or itself by filing a valid and timely request for exclusion. For purposes of settlement only, the Lead Plaintiffs are appointed as class representatives on behalf of all Settlement Class Members. The law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. are jointly appointed as Settlement Class counsel. If the Settlement is terminated for any reason or final approval is not granted by the Court, this preliminary certification of the Action as a class action shall be automatically vacated.

3. **Preliminary Approval of Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate as to the Settlement Class members, subject to further consideration at the Settlement Hearing described below.

4. **Consideration of Other Matters Deferred** – In the interests of conserving expenses to the Settlement Class, the Court shall defer until a later date the preliminary approval



of a proposed notice and notice procedures for the Settlement, and the scheduling of a hearing for final approval of the Settlement (the "Settlement Hearing").

5. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class members, as well as in administering the Settlement, shall be paid as set forth in the Stipulation. At or after the Settlement Hearing, the Court shall determine whether any application for attorneys' fees and expenses to be paid from the Settlement Fund shall be approved. Neither Sandler O'Neill nor Sandler O'Neill's Counsel shall have any responsibility for any application for attorneys' fees submitted by Co-Lead Counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the Settlement.

6. **Taxes** – Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court.

7. **Settlement Fund** – The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

8. **Termination of Settlement** – This Order shall become null and void, and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class members, and Sandler O'Neill, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the Effective Date does not occur, pursuant to the terms of the Stipulation; or (ii) the proposed Settlement is terminated or does not become effective for any

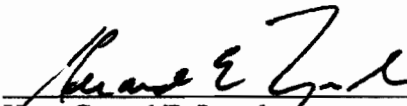
other reason. In such events, the Stipulation shall become null and void and of no further force and effect.

9. **Use of Order** – This Order shall not be construed or used as an admission, concession or declaration by or against Sandler O'Neill of any fault, wrongdoing, breach, or liability. Nor shall the Order be construed or used as an admission, concession or declaration by or against Lead Plaintiffs, or the Settlement Class members, that their claims lack merit, that their damages are in any way limited, or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

IT IS SO ORDERED.

Dated: Nov. 5, 2008

BY THE COURT

  
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Hon. Gerard E. Lynch

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK