

3. The shares sold in the Refco IPO were divided between an initial block of 26,500,000 shares, which the Underwriters were obliged to purchase, and an additional block of 3,975,000 shares issued pursuant to an option (known as the “green shoe option”), which was granted by Refco to the underwriters to cover over-allotments of shares. The green shoe option was exercised by the Underwriters. Browne Decl. Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

4. The IPO Registration Statement included, among other things, Refco’s unaudited financial statements for the three-month periods ending May 31, 2004 and May 31, 2005. Browne Decl. Ex. H (IPO Prospectus) at F-48-51.

5. Court-appointed Co-Lead Plaintiff RH Capital Associates LLC purchased 624,100 common shares pursuant to or traceable to Refco’s IPO. Browne Decl. Ex. U (Certification of RH Capital Associates LLC dated April 3, 2006).

A. The Junior Underwriter Defendants

6. The underwriters for the IPO included Defendants William Blair & Company, LLC (“William Blair”); Utendahl Capital Partners, L.P. (“Utendahl”); Samuel A. Ramirez & Company, Inc. (“Ramirez”); Muriel Siebert & Co. Inc. (“Siebert”); The Williams Capital Group, L.P. (“Williams Capital”); Harris Nesbitt Corp. (n/k/a BMO Capital Markets, Inc.) (“BMO”) and CMG Institutional Trading LLC (“CMG”) (collectively, the “Junior Underwriters”). Other banks that acted as underwriters in the Refco IPO included Defendants Credit Suisse First Boston LLC (“Credit Suisse”); Goldman, Sachs & Co. (“Goldman Sachs”); Banc of America Securities LLC (“BAS”); Deutsche Bank Securities, Inc. (“Deutsche Bank”); J.P.Morgan Securities, Inc. (“J.P. Morgan”); Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill

Lynch”); Sandler O’Neill & Partners, L.P. (“Sandler O’Neill”), and HSBC Securities (USA) Inc. (“HSBC”). Browne Decl. Ex. H (IPO Prospectus) at 136.

7. William Blair consented to having its name listed as an underwriter in the IPO Registration Statement, sold 508,933 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$11,196,526 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

8. BMO consented to having its name listed as an underwriter in the IPO Registration Statement, sold 508,933 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$11,196,526 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

9. Utendahl consented to having its name listed as an underwriter in the IPO Registration Statement, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

10. Ramirez consented to having its name listed as an underwriter in the IPO Registration Statement, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a

fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

11. Siebert consented to having its name listed as an underwriter in the IPO Registration, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

12. Williams Capital consented to having its name listed as an underwriter in the IPO Registration, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

13. CMG consented to having its name listed as an underwriter in the IPO Registration Statement, sold 152,375 shares (including its estimated portion of the shares issued pursuant to the green shoe option) for total proceeds of approximately \$3,352,250 and received a fee in connection therewith. Browne Decl. Ex. H (IPO Prospectus) at 136 and Ex. I (Press Release Titled “Refco, Inc. Announces Completion Of Its Initial Public Offering” dated August 16, 2005).

II. REFCO DISCLOSES THE RGHI RECEIVABLE

14. On October 10, 2005, Refco announced that it had discovered a receivable owed to the Company by a related-party entity, Refco Group Holdings Inc. (“RGHI”), which was wholly owned by Refco’s CEO Phillip Bennett. Refco’s announcement stated:

Refco Inc. (NYSE: RFX) today announced that it 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. Independent counsel and forensic auditors have been retained to assist the Audit Committee in an investigation of these matters.

This receivable from the entity controlled by Mr. Bennett was reflected on the Company’s prior period financials, as well as on the Company’s May 31, 2005 balance sheet. The receivable was not shown as a related party transaction in any such financials. For that reason, and after consultation by the Audit Committee with the Company’s independent accountants, 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.

Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005).

15. On October 11, 2005, Refco announced that the multi-hundred million dollar receivable “consisted in major part of uncollectible historical obligations...that arose as far back as 1998.” Refco further stated that “[t]hese obligations were transferred periodically to the entity controlled by Mr. Bennett [*i.e.*, RGHI] and the Company’s books and records then reflected a receivable from that entity.... The fact that the receivable was from a company controlled by

Mr. Bennett was hidden at the end of quarterly and annual reporting periods by reason of transfers to a third party....” Browne Decl. Ex. K (Press Release Title “Refco Supplements Prior Disclosure” dated October 11, 2005).

16. On October 17, 2005, Refco filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York. Browne Decl. Ex. L (Refco’s Form 8-K dated October 18, 2005).

**III. MATERIAL UNTRUE STATEMENTS AND OMISSIONS INCLUDED
IN THE IPO REGISTRATION STATEMENT**

A. Refco’s Unaudited Financial Results

1. Unaudited 1Q05 Financial Statements

17. The IPO Registration Statement included Refco’s unaudited consolidated balance sheet for the three months ended May 31, 2005, which stated that Refco had:

- a. total assets of \$74,317,191,000; and
- b. receivables from customers of \$1,807,446,000 (net of reserves of \$62,107,000).

Browne Decl. Ex. H (IPO Prospectus) at F-48.

18. The statements regarding assets and receivables from customers referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

19. The IPO Registration Statement included Refco’s unaudited consolidated statement of income for the three months ended May 31, 2005, which stated that Refco had net

income of \$42,587,000 for that three-month period. Browne Decl. Ex. H (IPO Prospectus) at F-49.

20. The statement regarding net income referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

21. The IPO Registration Statement stated that Refco had total members’ equity of \$185,427,000 as of May 31, 2005. Browne Decl. Ex. H (IPO Prospectus) at F-48 (unaudited consolidated balance sheet) and F-50.

22. The statement regarding members’ equity referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

23. The IPO Registration Statement included Refco’s unaudited consolidated statement of cash flows for the three months ended May 31, 2005, which stated that Refco had negligible receivables from equity members as of May 31, 2005. Browne Decl. Ex. H (IPO Prospectus) at F-51.

24. The statement regarding receivables referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press

Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

2. **Unaudited 1Q04 Financial Statements**

25. The IPO Registration Statement included Refco’s unaudited consolidated statement of income for the three months ended May 31, 2004, which stated that Refco had net income of \$59,270,000 for that three-month period. Browne Decl. Ex. H (IPO Prospectus) at F-49.

26. The statement regarding income referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

27. The IPO Registration Statement included Refco’s unaudited consolidated statement of changes in members’ equity for the three months ended May 31, 2004, which stated that Refco had total members’ equity of \$671,100,000 as of May 31, 2004. Browne Decl. Ex. H (IPO Prospectus) at F-50.

28. The statement regarding members’ equity referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

29. The IPO Registration Statement included Refco's unaudited consolidated statement of cash flows for the three months ended May 31, 2004, which stated that Refco had receivables from equity members of (\$13,777,000) as of May 31, 2004. Browne Decl. Ex. H (IPO Prospectus) at F-51.

30. The statement regarding receivables referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled "Refco Announces Undisclosed Affiliate Transaction" dated October 10, 2005) and Ex. K (Press Release Titled "Refco Supplements Prior Disclosure" dated October 11, 2005).

3. Other Unaudited Financial Information

31. The IPO Registration Statement also included significant financial information set forth in its textual portions, including the Management Discussion & Analysis ("MD&A") section, which stated in part:

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 probable losses that have been incurred as of the balance sheet date.

Browne Decl. Ex. H (IPO Prospectus) at 75.

32. The statements regarding receivables and reserves referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne

Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

33. Further, the IPO Registration Statement stated:
 - a. “For the year ended February 28, 2005, [Refco] generated ... \$176.3 million of net income and for the three months ended May 31, 2005, [Refco] generated ... \$42.6 million of net income.”
 - b. “[O]perating 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%”;
 - c. “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.”
 - d. “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.”

Browne Decl. Ex. H (IPO Prospectus) at 1, 2, 62 and 86.

34. The statements regarding income and profits referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

35. In addition, the IPO Registration Statement contained 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. Browne Decl. Ex. H (IPO Prospectus) at 72.

36. The statement regarding EBITDA referred to in the preceding paragraph was materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

37. The IPO Registration Statement stated that “the unaudited consolidated financial statements as of May 31, 2005 and for the three months ended May 31, 2004 and 2005 include all adjustments (consisting of normal, recurring adjustments) that are, in the opinion of management, necessary for a fair presentation of our financial position and result of operations for the period presented.” Browne Decl. Ex. H (IPO Prospectus) at 10.

38. The statements regarding Refco’s unaudited consolidated financial statements as of May 31, 2005 and for the three months ended May 31, 2004 and 2005 referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose and account for the existence of an uncollectible receivable totaling hundreds of millions of dollars. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

B. Refco’s Related-Party Transactions

39. The IPO Prospectus included a section entitled “Certain Relationships and Related Transactions,” which did not disclose the existence of the multi-hundred dollar related-party receivable owed to Refco by RGHI, the entity owned by Bennett. Browne Decl. Ex. H (IPO Prospectus) at 117-123.

40. The statements regarding related-party transactions referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose and account for the existence of hundreds of millions of dollars worth of related-party transactions involving RGHI. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

41. The IPO Registration Statement contains numerous references to RGHI, including, among others:

- a. “Ownership by Phillip R. Bennett, which constitutes 33.8% of our outstanding common stock following the offering, represents direct ownership and indirect ownership through each of Refco Group Holdings, Inc. and The Phillip R. Bennett Three Year Annuity Trust”;
- b. “Total consideration and average price per share paid by existing stockholders give effect to the \$27.9 million tax distribution paid to the members of New Refco prior to the Reincorporation and the cash contribution paid by Refco Group Holdings, Inc. to New Refco of \$21.7 million related to excess tax distributions but do not give effect to the \$550.0 million distribution paid to Refco Group Holdings, Inc. in connection with the THL Transactions”;
- c. “...the exchange of the existing equity investment of Phillip Bennett, our President and Chief Executive Officer, through Refco Group Holdings, Inc., of approximately \$382.5 million in Refco Group for an approximate 42.8% equity interest in New Refco”;
- d. “As part of the THL Transactions, Refco Group distributed \$550.0 million in cash and other capital distributions as well as all of the equity interests of Forstmann-Leff International Associates, LLC, which at that time owned substantially all the assets of our Asset Management business (the "Asset Management Distribution"), to Refco Group Holdings, Inc., an entity that was owned by Tone Grant and Phillip Bennett and that is now wholly owned by Phillip Bennett”; and
- e. “Represents a cash distribution by New Refco of approximately \$27.9 million to its members to enable them to meet their estimated tax obligations, partly offset by a cash contribution of \$21.7 million by Refco Group Holdings, Inc. to New Refco equal to the amount of tax distributions that Refco Group Holdings, Inc.

received from New Refco in excess of its pro rata share of all tax distributions made by New Refco to its members.”

Browne Decl. Ex. H (IPO Prospectus) at 7 at n. 1, 38 at n. 1, 40, 44 and 118 at n. 1.

42. The statements regarding RGHI referred to in the preceding paragraph were materially untrue and misleading because Refco failed to disclose the existence of hundreds of millions of dollars worth of related-party transactions involving RGHI. Browne Decl. Ex. J (Press Release Titled “Refco Announces Undisclosed Affiliate Transaction” dated October 10, 2005) and Ex. K (Press Release Titled “Refco Supplements Prior Disclosure” dated October 11, 2005).

C. Defendants Who Controlled Refco Have Also Admitted That Refco’s IPO Registration Statement Contained Materially Untrue Statements And Omissions

43. Defendants Thomas H. Lee Partners (“THL”), Thomas H. Lee Equity Fund V, L.P.; Thomas H. Lee Parallel Fund V, L.P.; Thomas H. Lee Equity (Cayman) Fund V, L.P.; Thomas H. Lee Investors Limited Partnership; the 1997 Thomas H. Lee Nominee Trust; and senior THL executives Thomas H. Lee, David V. Harkins, Scott L. Jaeckel and Scott A. Schoen (collectively the “THL Defendants”) controlled Refco at the time of the IPO. Browne Decl. Ex. H (IPO Prospectus) at 5 and 117-20.

44. The THL Defendants admitted in their Answer filed in this action that the IPO Registration Statement was materially false and misleading. Browne Decl. Ex. M (Answer Of The THL Defendants To The Second Amended Consolidated Class Action Complaint) at ¶¶203, 204, 215-17, 221-23, 226, 230-32, 379, 391 & 416.

IV. THE JUNIOR UNDERWRITERS CONDUCTED NO INVESTIGATION INTO THE ACCURACY OF REFCO'S IPO REGISTRATION STATEMENT

A. The Junior Underwriters Did Not Perform Any Investigation In Connection With Refco's IPO

1. William Blair

45. William Blair did not perform any investigation into the accuracy of the IPO Registration Statement before selling approximately \$11,196,526 worth of stock to the investing public in the Refco IPO. Browne Decl. Ex. N (Excerpt of Transcript of Rule 30(b)(6) Deposition of William Blair & Company by its designee James E. Washburn dated November 12, 2008 ("William Blair Tr.)) at 58-9, 62-4 and 66-7.

46. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 12, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, William Blair's corporate representative testified as follows:

Q: Can you please tell me everything that William Blair did, if anything, to perform due diligence on Refco in connection with the Refco IPO?

A: We did not perform any independent due diligence. We relied on the lead managers.

Q: And when you say you did not perform any independent due diligence, what due diligence did you perform, if any?

A: None

Q: Prior to the Refco IPO becoming effective, which was on or about August 10th, 2005, did William Blair do any investigation whatsoever into the accuracy of the statements made in the IPO Prospectus?

A: No.

Q: Did William Blair ever speak to Refco's auditors in connection with the Refco IPO?

A: No.

Q: Did William Blair ever speak or communicate in any way with Refco's outside attorneys in connection with the Refco IPO?

A: No.

Q: Did William Blair ever speak with members of Refco's management in connection with the Refco IPO?

A: Once.

[...]

Q: Do you view that call in any way as being due diligence on the Refco IPO?

A: No.

Q: Did any members of – did anyone from William Blair visit the offices of Refco in connection with the Refco IPO?

A: No.

Q: Did any members of William Blair speak to any of Refco's customers in connection with a Refco IPO?

A: Not to my knowledge.

Q: Did William Blair review draft prospectuses prior to the Refco IPO?

A: No.

Q: Did William Blair review a final prospectus prior to the Refco IPO?

[...]

A: Not prior to the IPO.

Browne Decl. Ex. N (William Blair Tr.) at at 58-9, 62-4 and 66-7.

2. Utendahl

47. Utendahl did not perform any investigation into the accuracy of the IPO

Registration Statement before selling approximately \$3,352,250 worth of stock to the investing

public in the Refco IPO. Browne Decl. Ex. O (Excerpt of Transcript of Rule 30(b)(6) Deposition of Utendahl Capital Partners, L.P. by its designee Jose R. Reyes dated November 18, 2008 (“Utendahl Tr.”)) at 166, 173, 177, 182-83, 198-200 and 218-19.

48. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 18, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Utendahl’s corporate representative testified as follows:

Q: So you know for sure that no one from Utendahl performed due diligence in connection with the Refco IPO, correct?

A: Correct.

Q: Did anyone from Utendahl make comments or revisions to any draft of the IPO prospectus filed in the Refco IPO?

A: Not that I’m aware of.

Q: [...] Did anyone from Utendahl review any financial statements or financial information regarding Refco in connection with the Refco IPO?

A: No.

Q: Well, what I’d like to know is what specific activities did Utendahl either conduct itself or participate in as an underwriter involved in the Refco IPO? What did Utendahl do?

A: Just accept an invitation to the transaction – to the transaction, that was really it.

Q: Nothing else whatsoever in connection with the Refco IPO?

A: No.

Q: So it’s true that no one from Utendahl participated in or conducted due diligence in connection with the Refco IPO?

A: Due diligence, no.

Q: In connection with its role as an underwriter in the Refco IPO, did Utendahl ever participate in due diligence calls?

A: No.

Q: In connection with its role as an underwriter in the Refco IPO, did Utendahl receive any information from Refco's management?

A: Information. No, not that I'm aware of, no.

Q: Did Utendahl ever request – in connection with the Refco IPO, did Utendahl ever request any information or documents from anyone involved with performing due diligence in connection with the Refco IPO?

A: No, not that I'm aware of.

Q: Did Utendahl ever receive information or documents from anyone involved with performing due diligence in connection with the Refco IPO?

A: No, not that I'm aware of.

Q: In respect of the Refco IPO, was there a bring-down due diligence call?

A: I don't know. We did not participate in any due diligence calls.

Q: [...] [D]id Utendahl take any steps whatsoever to ensure that the public disclosure documents relating to the Refco IPO were accurate and complete?

A: No, not that I'm – no, that not that I'm aware of, no. In terms of disclosure documents.

Q: Do you have any reason to believe that Utendahl was at all involved in –

A: No.

Q: --assuring that the materials publicly disclosed in respect to the Refco IPO were accurate and complete?

A: No.

Q: Did anyone from Utendahl visit Refco's offices?

A: No, not that I'm aware of.

Q: Did anyone from Utendahl take any steps to verify the accuracy and completeness of the information regarding receivables that was contained in Refco's IPO prospectus?

A: No, not that I'm aware of.

Q: Did anyone from Utendahl at any point take any steps to investigate Refco's history of trading losses in connection with the Refco IPO?

A: No, not that I'm aware of.

Browne Decl. Ex. O (Utendahl Tr.) at 166, 173, 177, 182-83, 198-200 and 218-19.

3. Ramirez

49. Ramirez did not perform any investigation into the accuracy of the IPO Registration Statement before selling approximately \$3,352,250 worth of stock to the investing public in the Refco IPO. Browne Decl. Ex. P (Excerpt of Transcript of Rule 30(b)(6) Deposition of Ramirez & Company, Inc. by its designee Lawrence F. Goldman dated November 7, 2008 ("Ramirez Tr.)) at 197-200 and 211-12.

50. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 7, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Ramirez's corporate representative testified as follows:

Q: [...] [W]hat specific activities did Ramirez participate in as an underwriter involved in the due diligence conducted in connection with the Refco IPO?

[...]

A: We were not involved in the due diligence process.

Q: So to close off, did Ramirez conduct any due diligence whatsoever in connection with the Refco IPO?

A: No, Ramirez & Company did not.

Q: Did Ramirez ever participate in due diligence calls?

A: No.

Q: In connection with the Refco IPO?

A: No.

Q: Did Refco – did Ramirez listen in on any calls with Refco’s management in relation to the due diligence conducted in respect of the Refco IPO?

A: No.

Q: Did Ramirez at any time ever request any information or documents from anyone involved in the due diligence process that was performed in connection with the Refco IPO?

[...]

A: No.

Q: Did Ramirez visit Refco’s offices?

A: No.

Q: Is Ramirez aware whether any other of the underwriters visited Refco’s offices?

[...]

A: I’m unaware.

Q: Did Ramirez take any steps to investigate or look into Refco’s credit facilities in connection with the Refco IPO?

[...]

A: No.

Q: Did anyone from – did Ramirez take any steps to investigate or look into related party transactions in connection with the Refco IPO?

A: No.

Q: Did anyone from Ramirez take any steps to investigate or look into Refco's history of trading losses in connection with the Refco IPO?

[...]

A: No.

Browne Decl. Ex. P (Ramirez Tr.) at 197-200 and 211-12.

4. Siebert

51. Siebert did not perform any investigation into the accuracy of the IPO Registration Statement before selling approximately \$13,352,250 worth of stock to the investing public in the Refco IPO. Browne Decl. Ex. Q (Excerpt of Transcript of Rule 30(b)(6) Deposition of Muriel Siebert & Co. by its designee Myles Turner dated October 24, 2008 ("Siebert Tr.)) at 82, 89, 105, 108-11, 119 and 150-51.

52. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on October 24, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Siebert's corporate representative testified as follows:

Q: Did Siebert review the Refco IPO prospectus prior to it being publicly filed?

A: It did not.

Q: Did Siebert conduct any investigation of Refco prior to accepting the role of underwriter in the Refco IPO?

[...]

A: It did not.

Q: Did Siebert conduct any due diligence independent of the book-running managers and co-managers in respect of the Refco IPO?

A: Apart from reading this document [*i.e.*, the IPO Registration Statement], we did not conduct any due diligence in the Refco IPO.

Q: Did anyone from Siebert request any due diligence materials from the other underwriters involved in the Refco IPO?

[...]

A: We did not.

Q: Did anyone – in connection with the Refco IPO, did Siebert ever participate in due diligence conference calls?

[...]

A: We did not.

Q: In connection with its role as an underwriter on the Refco IPO, did Siebert ever communicate in any way with Refco's management?

A: We did not.

Q: In connection with its role as an underwriter in the Refco IPO, did Siebert receive any information from Refco's management?

A: We did not.

Q: In respect of underwriting the Refco IPO, did Siebert ever request any information or documents from anyone involved in the Refco IPO?

[...]

A: It did not.

Q: Did anyone from Siebert ever visit Refco's offices while being involved in the Refco IPO?

[...]

A: We did not.

Q: Did Siebert ever communicate with any attorneys in connection with the Refco IPO?

A: It did not.

Q: Did Siebert ever provide comments on any aspect of the prospectus filed in respect to the I – the Refco IPO?

A: To the best of my knowledge, it did not.

Q: Was – during the Refco IPO process, was there a process by which underwriters would communicate with – with each other during the due diligence?

[...]

A: As a junior co – as a junior underwriter we were not involved in any of the due – due diligence process that was conducted by the leads and the co-managers in the Refco IPO.

Browne Decl. Ex. Q (Siebert Tr.) at 82, 89, 105, 108-11, 119 and 150-51.

5. Williams Capital

53. Williams Capital did not perform any investigation into the accuracy of the IPO Registration Statement before selling approximately \$3,352,250 worth of stock to the investing public in the Refco IPO. Browne Decl. Ex. R (Excerpt of Transcript of Rule 30(b)(6) Deposition of The Williams Capital Group by its designee Jonathan W. Levin dated November 4, 2008 (“Williams Capital Tr.”)) at 73, 83 and 84.

54. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 4, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Williams Capital’s corporate representative testified as follows:

Q: Now, looking back ... prior to [July 29, 2005] had Williams Capital engaged in any due diligence with respect to Refco?

A: No.

Q: Prior to that date, had Williams Capital reviewed any draft IPO prospectus prepared in connection with the Refco IPO?

A: No.

Q: So I think I know the answer, but did Williams Capital have any communications with the underwriters' counsel in connection with the Refco IPO?

A: We did not.

Browne Decl. Ex. R (Williams Capital Tr.) at 73, 83 and 84.

6. BMO

55. BMO did not perform any investigation into the accuracy of the IPO Registration Statement before selling approximately \$11,196,526 worth of stock to the investing public in the Refco IPO. Browne Decl. Ex. S (Excerpt of Transcript of Rule 30(b)(6) Deposition of Harris Nesbitt Corp. (n/k/a BMO Capital Markets, Inc.) by its designee Diederik Van Nispen dated February 12, 2008 ("BMO Tr.") at 113-15, 122-27 and 130.

56. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on February 12, 2009 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, BMO's corporate representative testified as follows:

Q: Did BMO perform any due diligence in connection with the Refco IPO?

A: We were invited in as a syndicate member. And as a syndicate member, we are entitled to rely on the due diligence of the lead manager. We had an internal discussion to confirm that Refco was a client in good standing. And we reviewed the S-1. The company was already on the road show. The S-1 -- the red had already been printed and we reviewed the red. That's what we did. That's customary industry practice for firms that are participating in a syndicated capacity.

Q: Did BMO take any steps, though, after reading the S-1, to verify whether the statements in there were accurate and complete?

A: Again, you know, we relied on the diligence of the lead manager, and we were not aware of any statements in reading the red that we thought were incorrect or misleading.

Q: But did BMO do anything to investigate as to whether the statements in the red, in the offering document, were accurate and complete?

[...]

A: It's not industry practice to do that.

Q: And in fact, BMO in this case did not?

A: It's industry practice to rely on the diligence of the lead manager.

Q: [...] In this case, did BMO, whether it's practice or not, did BMO do anything to investigate whether the statements in the offering documents, Refco's IPO were accurate and complete?

[...]

A: [...] we did what I said we did, which is relied on the diligence of the leads. We made internal inquiry as to whether Refco was a customer in good standing. And we read the S-1, read the red; we read the red and didn't see anything in there that caused us to think that there was something wrong or misleading.

Q: What steps, if any, did BMO take to confirm that the statements in the IPO registration relating to Refco's related-party transactions were accurate?

A: Not aware of any specific steps that would have been taken. We reviewed it, the entire red, and didn't see anything in it that we thought was not accurate.

Q: Are you aware of any steps that BMO took to investigate whether those statements were accurate or not accurate?

A: Not specifically. Again, we relied on the diligence of the leads.

Q: Did BMO participate in any due diligence calls at any point that involved any other members of the underwriting syndicate?

A: No. It's industry practice not to include anyone other than the leads in the calls.

Q: Did BMO, at any point, receive any due diligence documents from any other member of the underwriting syndicate?

A: Not that I recall.

Q: Did BMO, at any point, ask any other member of the underwriting syndicate to provide it with due diligence documents?

A: Not that I recall.

Q: Did BMO, at any point in connection with any due diligence done on the Refco IPO, provide any documents to other members of the underwriting syndicate relating to Refco?

A: Not that I am aware of.

Q: Did BMO participate in any due diligence calls with any members of Refco's management in connection with any due diligence on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO participate in any meetings with any members of Refco's management in connection with any due diligence on the Refco IPO?

A: Not that I am aware of. We wouldn't have been invited.

Q: Did BMO ask to be invited to any meetings with members of Refco's management in connection with any due diligence on the Refco IPO?

A: John, again, not that I am aware of. It's just not done. It's not industry practice.

Q: Did BMO ask Refco to provide it with any documents in connection with any due diligence investigation relating to the Refco IPO?

A: Not that I am aware of.

Q: Did BMO participate in any due diligence calls with anyone from Tom Lee Partners in connection with due diligence on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO have any communications with Refco's auditors in connection with any due diligence on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO ask Refco's auditors to provide it with any documents in connection with any due diligence done on the Refco IPO?

[...]

A: Not that I am aware.

Q: Did BMO have any communications with any of Refco's attorneys in connection with any due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO have any communication with any Thomas H. Lee's attorneys in connection with any due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO conduct any visits to Refco's offices in connection with any due diligence on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO speak with any of Refco's customers in connection with any due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO speak with any members of Refco's former management in connection with any due diligence done on the Refco IPO?

A: Not that I am aware of.

Q: Did BMO internally prepare any due diligence documents relating to any due diligence investigation that might have been done on the Refco IPO?

A: You know, again, we were entitled to rely on the diligence of the leads.

Q: Did BMO receive any projections from Tom Lee or Refco in connection with any due diligence investigation in the IPO?

[...]

A: Not that I am aware of.

Q: Did BMO have any communications with Cravath relating to due diligence performed on the Refco IPO?

A: Not that I am aware of.

Q: So am I correct that BMO did no due diligence on its own?

A: BMO relied on the diligence of the leads. We made these internal inquiries, as I discussed. And we reviewed the red herring. That's what we did.

Browne Decl. Ex. S (BMO Tr.) at 113-15, 122-27 and 130.

7. CMG

57. Lead Plaintiffs requested a deposition of CMG on June 3, 2008, but CMG has yet to make a witness available for deposition. Browne Decl. Ex. T (Notice of Rule 30(b)(6) Deposition Addressed to CMG Institutional Trading LLC dated June 3, 2008).

58. There is no evidence that CMG conducted its own investigation into the accuracy of the IPO Registration Statement before selling approximately \$3,352,250 worth of stock to the investing public in the Refco IPO. Browne Decl. ¶21.

B. The Junior Underwriters Took No Steps To Verify The Adequacy Of Other Underwriters' Purported Investigation

1. William Blair

59. William Blair took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. Ex. N (William Blair Tr.) at 60-63.

60. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 12, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, William Blair's corporate representative testified as follows:

Q: What, if anything did William Blair do to verify that the due diligence being performed by other members of the syndicate and relied upon by William Blair was adequate?

A: Nothing.

Q: Did William Blair review any aspect of the due diligence that any other underwriter performed on Refco?

A: No.

Q: Did William Blair make any effort to discuss with any other member of the underwriting syndicate any aspect of the due diligence that they may have performed on Refco?

A: No.

Q: Does William Blair even know whether the other underwriters performed due diligence?

A: Not specifically.

Browne Decl. Ex. N (William Blair Tr.) at 60-3.

2. Utendahl

61. Utendahl took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. Ex. O (Utendahl Tr.) at 206, 208-09, and 211-12.

62. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 18, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Utendahl's corporate representative testified as follows:

Q: Did Utendahl take any steps to independently verify the due diligence conducted by Credit Suisse First Boston or any other underwriter involved in the Refco IPO?

A: No.

Q: ...What, if anything, did Utendahl do to satisfy itself as to the adequacy or reasonableness of the due diligence investigation conducted by CSFB, the lead manager on the Refco IPO?

A: Oh, nothing.

Q: Nothing whatsoever?

A: I mean we never participated in a due diligence in any capacity on this transaction. It was all on the lead.

Q: What – how does Utendahl know – how did, if at all, Utendahl know whether the underwriter – whether due diligence was conducted at all by the lead underwriter involved in the Refco IPO? If the answer is that you don't know, then that's fine. I just want an answer.

A: I don't know.

Q: And you don't know because Utendahl took no steps whatsoever to determine whether or not the lead underwriter had in fact conducted due diligence in connection with the IPO; is that correct?

A: Correct. Because we were never on any due diligence calls.

Browne Decl. Ex. O (Utendahl Tr.) at 206, 208-09, and 211-12.

3. Ramirez

63. Ramirez took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. Ex. P (Ramirez Tr.) at 203-04.

64. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 7, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Ramirez's corporate representative testified as follows:

Q: And did Ramirez take any steps whatsoever to test and verify that the due diligence conducted by the other underwriters was adequate in connection with the Refco IPO?

[...]

A: No.

Q: Was Ramirez satisfied that the underwriting syndicate conducted a reasonable investigation in connection with the Refco IPO?

A: We rely on the – rely on the due diligence conducted by the book runners.

Q: And was Ramirez satisfied in the context of the Refco IPO that the underwriting syndicate had in fact conducted a reasonable investigation in connection with the Refco IPO?

A: We were satisfied.

Q: But it took no – but Ramirez took no steps to verify or to test that the due diligence was in fact performed adequately?

A: Correct.

Browne Decl. Ex. P (Ramirez Tr.) at 203-04.

4. Siebert

65. Siebert took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. Ex. Q (Siebert Tr.) at 109 and 118.

66. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on October 24, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Siebert's corporate representative testified as follows:

Q: Did – did anyone at Siebert do anything to confirm or verify that the other underwriters involved were conducting adequate due diligence in respect of the Refco IPO?

[...]

A: We did not.

Q: What – what actions specifically, if any, did Siebert take to – to satisfy itself as to the adequacy of the due diligence performed by any other book runner – by any other underwriters in the Refco IPO?

A: Siebert took no actions.

Browne Decl. Ex. Q (Siebert Tr.) at 109 and 118.

5. Williams Capital

67. Williams Capital took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl., Ex. R (Williams Capital Tr.) at 79, 82 and 83.

68. In a Rule 30(b)(6) deposition conducted by Lead Plaintiffs on November 4, 2008 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, Williams Capital's corporate representative testified as follows:

Q: At any point in time did Williams Capital ask the underwriters, the other underwriters to change any language in the prospectus for the Refco IPO?

A: Not to my knowledge.

Q: And without unduly narrowing that, at any point in time did Williams Capital ask anyone to change language in the prospectus for the Refco IPO?

A: Not to my knowledge.

Q: Did Williams Capital have any communications with the more senior underwriters to review the due diligence that you presumed the senior underwriters were doing?

A: We did not.

Q: And did Williams Capital review any of the work that those entities [*i.e.*, Credit Suisse First Boston, Goldman Sachs, Bank of America, underwriters' counsel, and the co-managers] did in preparing the IPO prospectus?

A: No. We relied on them.

Browne Decl. Ex. R (Williams Capital Tr.) at 79, 82 and 83.

6. BMO

69. BMO took no steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. Ex. S (BMO Tr.) at 123, 124 and 129-30.

70. In a 30b)(6) deposition conducted by Lead Plaintiffs on February 12, 2009 regarding the topic of any analysis, due diligence, investigation, research or audit conducted in respect of the Refco IPO, BMO's corporate representative testified as follows:

Q: Did you do any – did BMO do anything to confirm that the other, that the lead underwriters had actually conducted due diligence?

A: It's industry practice to rely on the fact that they have done it.

Q: Setting aside for the moment whether it's industry practice, in this specific case, did BMO do anything to confirm even whether or not the lead underwriters had done any due diligence?

A: No.

Q: Did BMO, at any point, receive any due diligence documents from any other member of the underwriting syndicate?

A: Not that I recall.

Q: Did BMO, at any point, ask any other member of the underwriting syndicate to provide it with due diligence documents?

A: Not that I recall.

Q: I may have asked this, but did BMO ever contact any of the other underwriters to inquire as to the status of the due diligence investigation in the Refco IPO?

A: Not that I am aware of.

Browne Decl. Ex. S (BMO Tr.) at 123, 124 and 129-30.

7. **CMG**

71. There is no evidence that CMG took any steps to verify the adequacy of any investigation conducted by other underwriters in connection with the IPO. Browne Decl. ¶21.

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