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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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: In re : Chapter 11 Case
: : No. 05-60006 (RDD)
REFCO INC., et al., : (Jointly Administered)
: :
Debtors. :
: :
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**MOTION OF REFCO LITIGATION TRUSTEE TO AMEND CERTAIN
PROVISIONS OF LITIGATION TRUST AGREEMENT**

Marc S. Kirschner, in his capacity as the trustee (the "Litigation Trustee") for the Refco Litigation Trust (the "Litigation Trust"), hereby moves (the "Motion") to amend certain provisions of the Litigation Trust Agreement (as defined below) in order to reimburse unanticipated out-of-pocket expenses incurred by certain of the members of the Litigation Trust Committee (as defined below). In support of this Motion, the Litigation Trustee respectfully represents as follows:

I. BACKGROUND

A. The Chapter 11 Cases

1. On October 17, 2005 (the "Petition Date"), Refco Inc. and certain of its

direct and indirect subsidiaries (collectively, the "Debtors")¹ filed voluntary petitions in this Court for relief under Chapter 11 of Title 11 of the United States Code (as amended, the "Bankruptcy Code").²

2. On December 15, 2006, the Court entered an order (the "Confirmation Order") confirming the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries (the "Plan").

3. On December 26, 2006 (the "Effective Date"), the Plan became effective.

4. On the Effective Date, pursuant to the terms of the Plan, the Debtors transferred certain claims, rights, suits and causes of action to the Litigation Trust for the benefit of Litigation Trust Beneficiaries (as defined in the Plan). The operations of the Litigation Trust became governed by a litigation trust agreement, a form of which was attached to the Plan as Exhibit F (the "Trust Agreement").³

5. In accordance with Section 1.1(b) of the Trust Agreement, on the Effective Date, Marc S. Kirschner was appointed as Litigation Trustee. In addition, pursuant to Section 4.1 of the Trust Agreement, a litigation trust committee (the "Litigation Trust Committee") was formed.

6. As set forth on Schedule B to the Trust Agreement, the members of the

¹ The Debtors are as follows: Bersec International LLC; Kroeck & Associates, LLC; Lind-Waldock Securities LLC; Marshall Metals LLC; New Refco Group Ltd., LLC; Refco Administration LLC; Refco Capital Holdings LLC; Refco Capital LLC; Refco Capital Management LLC; Refco Capital Markets, Ltd.; Refco Capital Trading LLC; Refco Finance Inc.; Refco Financial LLC; Refco Fixed Assets Management LLC; Refco F/X Associates, LLC; Refco Global Capital Management LLC; Refco Global Finance Ltd.; Refco Global Futures LLC; Refco Global Holdings LLC; Refco Group Ltd., LLC; Refco Inc.; Refco Information Services LLC; Refco Managed Futures LLC; Refco Mortgage Securities, LLC; Refco Regulated Companies LLC; Summit Management LLC; and Westminster-Refco Management LLC.

² Reorganized Debtors Lind-Waldock Securities LLC, Refco Managed Futures, LLC and Westminster-Refco Management LLC filed chapter 11 petitions on June 5, 2006.

³ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Trust Agreement. A copy of the Trust Agreement is available at www.bingham.com/refco.

Litigation Trust Committee are: (1) VR Global Partners, L.P., (2) Premier Bank International, N.V., (3) Lyxor/Beach Discretionary Fund Ltd., (4) Capital Management Select Fund, Ltd., and (5) Abadi & Company. At the request of the Litigation Trustee and the Litigation Trust Committee, a sixth party, Leuthold Funds Inc. (the "Ex Officio Member"), has consulted with the Litigation Trustee and participated as an ex-officio member of the Litigation Trust Committee.

7. Pursuant to Section 4.8 of the Trust Agreement, each member of the Litigation Trust Committee is entitled to be paid \$20,000 annually as compensation for its services under the Trust Agreement (in addition to reasonable out-of-pocket expenses). Section 3.3 of the Trust Agreement, however, prohibits compensation of professional fees incurred by the members of the Litigation Trust Committee.

8. As more fully set forth below, since the Effective Date, the Litigation Trustee has requested that the Litigation Trust Committee members (including their counsel) participate actively in the decisions and management of the Litigation Trust. As a result, during the first year of Litigation Trust operations, several members of the Litigation Trust Committee, as well as the Ex Officio Member, have incurred actual out-of-pocket expenses (primarily for legal fees) well in excess of \$20,000 and representing multiples of the out-of-pocket expenses anticipated at the time the terms of the Trust Agreement were negotiated.

II. RELIEF REQUESTED

9. By this Motion, the Litigation Trustee seeks entry of an order in the form attached as Exhibit A hereto (the "Proposed Order"). If entered, the Proposed Order would amend the Trust Agreement⁴ to provide that, in addition to the annual compensation of \$20,000, each member of the Litigation Trust Committee will be entitled to reimbursement from the

⁴ All such amendments are intended to be retroactive to the Effective Date of the Plan.

Litigation Trust for reasonable, documented out-of-pocket expenses (including legal fees) incurred in the performance of such member's Duties up to a maximum cap of \$80,000 annually.⁵ In addition, although not entitled to compensation under the Trust Agreement, the Ex Officio Member would be entitled to reimbursement of reasonable, documented out-of-pocket expenses incurred in connection with service to the Litigation Trustee or the Litigation Trust Committee, up to a maximum cap of \$100,000 annually.

10. The process for determining reasonableness of professional fees incurred will be to require each member and the Ex Officio Member to deliver sufficient documentation, in form and substance satisfactory to the Litigation Trustee, evidencing the services performed and the benefit conferred upon the Litigation Trust. The Litigation Trustee and a member of the Litigation Trust Committee (who has not utilized the services of outside counsel and, accordingly, is not receiving any additional reimbursement of expenses hereunder) will review the documentation of services rendered and, subject to the maximum caps set forth above, will authorize payment.

III. BASIS FOR RELIEF

11. Section 11.1(b) of the Trust Agreement permits amendments to the agreement upon approval of this Court, so long as such amendments do not adversely affect the distributions to be made to Litigation Trust Beneficiaries.⁶ Here, the proposed amendments to modify the reimbursement policy for Litigation Trust Committee members do not adversely affect Litigation Trust Beneficiaries. Rather, the modifications would enhance the prospects of

⁵ There is no corresponding increase or amendment to the Private Actions Trust. The proposed reimbursement structure would apply to the members regardless of capacity, provided that the Litigation Trustee will allocate such expenses, as appropriate and whenever possible.

⁶ As a technical matter, Section 11.1(b) also requires the approval of a two-thirds vote of the Committee for any amendment. For the avoidance of doubt, the Committee has, by unanimous vote, approved the amendments proposed herein.

recovery by such beneficiaries by ensuring continued and active participation in Litigation Trust operations by the members of the Litigation Trust Committee.⁷

12. With respect to the Ex Officio Member, the Litigation Trustee does not seek to amend or modify the Trust Agreement. Section 3.12(f) of the Trust Agreement permits the Litigation Trustee to retain and approve consultants and professionals on terms that the Litigation Trustee determines are appropriate. The Litigation Trustee submits that the services of the Ex Officio Member, as one of the largest foreign exchange or "FX" customers of Refco Capital Markets Ltd., were and continue to be absolutely essential to maximizing value of the assets of the Litigation Trust. The Ex Officio member has been represented by and has served through its outside legal counsel. Section 11.1(a) permits amendments to the Trust Agreement, without court approval, to clarify ambiguities in the Trust Agreement. Nevertheless, the Litigation Trustee felt that his anticipated reimbursement of out-of-pocket expenses incurred by the Ex Officio Member warranted notice and a hearing to the extent any Litigation Trust Beneficiary has an objection to the same.

13. The issues facing the Litigation Trust are complex and extensive, and the members of the Committee have been instrumental to the development and pursuit of strategies relevant to the trust. Specifically, on the Effective Date, the Debtors transferred to the Litigation Trust, among other things, all of the claims, rights of action, suits or proceedings of a multi-billion dollar enterprise -- an enterprise that crashed into bankruptcy following allegations of fraud, criminal conduct and related misappropriations by certain management. The potential lawsuits and related actions to be analyzed by the Litigation Trust were countless, and the Litigation Trustee relied heavily on the knowledge of the members of the Litigation Trust

⁷ Section 12.4 of the Trust Agreement provides that this Court shall have jurisdiction to enforce the terms and provisions of the Trust Agreement.

Committee and the Ex Officio Member, several of whom in turn instructed their counsel to actively assist the Litigation Trustee in faithfully carrying out his charge.

14. Moreover, in order to ensure proper analysis of complex legal issues by the members of the Committee, the Litigation Trustee has welcomed and invited the participation of counsel to the members when developing strategy. The counsel to the members, who are experienced and sophisticated attorneys from among the largest law firms in the country, have also been beneficial in seeking to maximize the value received in the expenditure of the funds available to the Litigation Trust to pursue claims. Again, this participation ensures that the views of the Litigation Trust Beneficiaries are considered, articulated and implemented through the Litigation Trust oversight process.

15. As of the filing of this Motion, just one year after the Plan's Effective Date, the Litigation Trust has filed numerous legal actions seeking to recover billions of dollars from participants in the Refco schemes as well as avoidable transfers. In addition to avoidance actions, the Litigation Trust commenced actions based on fraud, aiding and abetting fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, professional malpractice and related misconduct. Moreover, the Litigation Trust continues to analyze additional potential actions at this time for which tolling agreements are in effect and the Litigation Trust is the beneficiary, and its counsel is becoming the co-lead counsel of a class action brought on behalf of securities customers of Refco Capital Markets Ltd.

16. At this time, additional potential causes of action remain to be considered. In addition, prosecution and settlement strategies in respect of existing actions remain to be implemented. Accordingly, the Litigation Trustee believes that continued participation of the Litigation Trust Committee and counsel to certain of its members and ex officio members in the

Litigation Trust process will be necessary and beneficial to all Litigation Trust Beneficiaries.

17. In the view of the Litigation Trustee, the Trust Agreement does not adequately address the degree to which Litigation Trust Committee participation is required for proper administration of a trust of the size, scope and complexity at issue in these cases. Accordingly, the Litigation Trustee respectfully requests that the Court permit a modest modification to the Trust Agreement so as to ensure that the members of the Litigation Trust Committee are not expending substantial personal resources for the benefit of the Litigation Trust without reimbursement of reasonable out-of-pocket expenses.

18. Such an amendment is supported by Section 11.1(b) of the Trust Agreement, which expressly permits substantive amendments so long as they do not adversely impact the distributions to Litigation Trust Beneficiaries.⁸ As discussed above, the Litigation Trustee believes the proposed amendments will aid in, rather than adversely impact, distributions to Litigation Trust Beneficiaries by ensuring proper operations of the Litigation Trust.

IV. NOTICE

19. Notice of this Motion will be provided to the United States Trustee, all parties requesting service of papers in the Debtors' cases, all parties with allowed claims in classes entitled to participate in the Litigation Trust, and parties electing to participate in the Private Actions Trust.⁹ The Litigation Trustee submits that such notice is sufficient under the

⁸ The Litigation Trustee notes that certain provisions of the Trust Agreement (for instance, Section 4.8), contrary to Section 3.3 of the agreement, reference the Litigation Trustee's authority to reimburse members of the Litigation Trust Committee for their of out-of-pocket expenses, without referencing any express limitation on whether professional fees may be reimbursed. As set forth above, however, Section 3.3's express prohibition of payment of professional fees necessitated the filing of this Motion for an amendment of the Trust Agreement under Section 11.1(b).

⁹ In the case of beneficiaries of the Litigation Trust and the Private Actions Trust who are holders of Old Equity Interests (as defined in the Plan), notice of this Motion has been provided by (i) service by mail on holders of record that are also beneficial holders; and (ii) electronic service on the holders of record that are not beneficial holders with instructions to immediately deliver the same to the beneficial holders thereof.

circumstances and requests that the Bankruptcy Court find that no other or further notice of the relief requested herein is required.

V. CONCLUSION

WHEREFORE, the Litigation Trustee respectfully requests that the Court enter the Proposed Order and grant such other and further relief as may be just and proper.

Dated: January 2, 2008
New York, New York

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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

REFCO INC., et al.,

Debtors.

Chapter 11

Case No. 05-60006 (RDD)

(Jointly Administered)

**ORDER APPROVING LITIGATION TRUSTEE'S MOTION TO AMEND CERTAIN
PROVISIONS OF LITIGATION TRUST AGREEMENT**

Upon the motion, dated January 2, 2008 (the "**Motion**"),¹ of the Litigation Trustee to amend certain provisions of the Litigation Trust Agreement; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors and all Litigation Trust Beneficiaries; and it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further notice need be given; and the Court having considered the Motion and any Responses to the Motion; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND, DETERMINED, ORDERED, ADJUDGED AND DECREED THAT:²

1. Notwithstanding anything to the contrary in the Trust Agreement, the Litigation Trust Committee shall be deemed to include Leuthold Funds Inc., in its capacity as an ex-officio member of the Litigation Trust Committee;

¹ Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion.

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

2. Notwithstanding anything to the contrary in the Trust Agreement, each member of the Litigation Trust Committee (including Leuthold Funds Inc.) shall be paid, by the Litigation Trust or the Reorganized Debtors, as allocable, the amount of \$20,000 annually. In addition, each member of the Litigation Trust Committee (including Leuthold Funds Inc.) shall be entitled to reimbursement from the Litigation Trust of reasonable out-of-pocket expenses (including legal fees) for the performance of its Duties up to \$80,000 annually;

3. The amendments described herein shall apply retroactively to the Effective Date of the Plan;

4. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order;

5. The requirement of Local Bankr. R. 9013-1(b) for the service and filing of a separate memorandum of law is deemed satisfied by the Motion.

Dated: New York, New York
January __, 2008

Honorable Robert D. Drain
United States Bankruptcy Judge