

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO CAPITAL MARKETS, LTD.	:	06-Civ.-0643 (JSR) ←
BROKERAGE CUSTOMER SECURITIES	:	08-Civ-6167 (2d Cir.)
LITIGATION	:	
	:	
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~~PROPOSED~~ ORDER PRELIMINARILY APPROVING
PROPOSED PARTIAL SETTLEMENT

WHEREAS, a consolidated class action entitled In re Refco Capital Markets, Ltd. Brokerage Customer Securities Litigation, No. 06 Civ. 0643 (JSR) (S.D.N.Y.) (the "Action") was commenced in this Court, subsequently dismissed with prejudice in this Court and is currently pending in the United States Court of Appeals for the Second Circuit;

WHEREAS, Lead Plaintiffs Global Management Worldwide Limited, Arbat Equity Arbitrage Fund Limited and Russian Investors Securities Limited ("Lead Plaintiffs"), on behalf of themselves and the class of persons and entities defined below, and Defendants 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 Partners, L.P., THL Equity Advisors V, LLC, THL Managers V, LLC, Thomas H. Lee Advisors, LLC, Thomas H. Lee Investors Limited Partnership, The 1997 Thomas H. Lee Nominee Trust, Thomas H. Lee, David V. Harkins, Scott L. Jaeckel and Scott A. Schoen (the "Settling Defendants" and, together with the Lead Plaintiffs, the "Settling Parties"), have determined to settle all claims asserted against the Settling Defendants in this Action with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement, dated February 28, 2011 (the "Stipulation"), subject to the approval of this Court (the "Settlement"); and

7. **Approval of Form and Content of Notice** – The Court: (a) approves, as to the form and content, the Notice attached hereto as Exhibit A-1; and (b) finds that the mailing and distribution of the Notice in the manner and form set forth in Paragraph 6 of this Order: (i) is the best notice reasonably practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases contained therein) and of their rights to object to the proposed Settlement and appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §78u-4, *et seq.*) (the “PSLRA”), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice before it is mailed.

8. **Appearance and Objections to the Proposed Settlement** – Any Settlement Class Member may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice by filing with the Clerk of Court and delivering a notice of appearance to both Lead Plaintiffs’ Counsel and the Settling Defendants’ Counsel listed in the Notice such that it is received no later than twenty (20) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Lead Plaintiffs’ Counsel. Any member of the Settlement Class may file a written objection to the proposed Settlement and appear and show cause, if he, she or it has any cause, why the proposed Settlement should not be approved; provided, however, that no Settlement Class Member shall be heard or entitled to contest the

approval of the terms and conditions of the proposed Settlement unless that person or entity has filed written objections with the Court and served copies of such objections in the manner provided in the Notice such that it is received no later than twenty (20) calendar days prior to the Settlement Hearing on:

Greg A. Danilow
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767 Fifth Avenue
New York, NY 10153

Richard A. Rosen
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Scott Edelman
Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005

Richard L. Stone
Kirby McInerny LLP
830 Third Avenue
New York, NY 10022

9. Any objections, filings and other submissions by the objecting Settlement Class Member must contain a statement of his, her or its objection, as well as the specific reasons, if any, for each objection, including the legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention.

10. Any member of the Settlement Class who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to the Settlement and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the proposed Settlement, or from otherwise being heard concerning the Settlement in this or any other proceeding.

11. **Stay** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action involving the Settling Defendants, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending the Settlement Hearing, the Court enjoins Lead Plaintiffs and all Settlement Class Members from commencing or prosecuting, either directly, indirectly, representatively or in any other capacity, any and all of the Released Plaintiffs' Claims against each and all of the Released Defendant Persons.

12. **Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class Members shall be paid as set forth in the Stipulation.

13. **Termination of Settlement** – If the Stipulation is terminated, the Settlement is not approved or the Effective Date does not occur, this Order shall become null and void and be without prejudice to the rights of Lead Plaintiffs, the Settlement Class Members and the Settling Defendants, all of whom shall be restored to their respective positions in the Action as of January 13, 2011.


14. **Use of this Order** – This Order, the proposed Settlement, the Stipulation and any and all of their terms (and all negotiations, discussions and proceedings in connection therewith): (a) shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other than as may be necessary to enforce the terms of this Order and/or the proposed Settlement; (b) shall not be described as, construed as, interpreted as or offered or received against any of the Settling Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or admission by the Settling Defendants as to any liability, negligence, fault, wrongdoing on their part or the validity of any claim by Lead Plaintiffs or the merits of any of their defenses; and (c) shall not be described as, construed as, interpreted as, or offered or received against Lead

Plaintiffs or any Settlement Class Member as evidence of any infirmity in the claims of said Lead Plaintiffs and the Settlement Class;

15. **Supporting Papers** – Lead Plaintiffs’ Counsel shall file and serve papers in support of the proposed Settlement no later than twenty-one (21) calendar days prior to the Settlement Hearing; if reply papers are necessary, they are to be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

16. The Court retains jurisdiction to consider all further applications arising out of the proposed Settlement.

SO ORDERED this 3rd day of May, 2011



The Honorable Jed S. Rakoff
United States District Judge