

CAPSTONE ADVISORY GROUP, LLC  
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Special Financial Advisor to the RCM Trustee

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re : Chapter 11 Case  
: No. 05-60006 (RDD)  
Refco Inc., et al., : (Jointly Administered)  
:   
Debtors. :   
:   
----- X

**SUMMARY OF COMBINED SECOND INTERIM AND FINAL APPLICATION OF  
CAPSTONE ADVISORY GROUP, LLC FOR ALLOWANCE AND PAYMENT OF  
COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF  
EXPENSES INCURRED FOR THE PERIOD OCTOBER 1, 2006 THROUGH  
DECEMBER 26, 2006**

Name of Applicant: Capstone Advisory Group, LLC

Authorized to Provide Professional Services to: Marc S. Kirschner, Esq. as Chapter 11  
Trustee for the Estate of Refco Capital Markets Ltd.

Date of Final Retention Order:	<u>July 17, 2006</u>
Interim Period for Which Compensation and Approval are Sought:	<u>10/1/06 – 12/26/06</u>
Interim Amount of Compensation Sought as Actual, Reasonable, and Necessary:	<u>\$980,482.25</u>
Interim Amount of Reimbursement Sought as Actual, Reasonable, and Necessary:	<u>\$11,658.97</u>
Interim Amount of Compensation Paid as Actual, Reasonable, and Necessary:	<u>\$432,726.20</u>
Interim Amount of Reimbursement Paid as Actual, Reasonable, and Necessary:	<u>\$5,806.61</u>
Total Amount of Unpaid Compensation and Reimbursement:	<u>\$553,608.41</u>

Entire Postpetition Period for Which Final Compensation and Reimbursement are Sought:	<u>6/2/06 – 12/26/06</u>
Entire Postpetition Amount of Compensation Sought as Actual, Reasonable, and Necessary:	<u>\$1,683,027.50</u>
Entire Postpetition Amount of Reimbursement Sought as Actual, Reasonable, and Necessary:	<u>\$19,841.54</u>
Interim Amount of Compensation Paid as Actual, Reasonable, and Necessary:	<u>\$1,135,271.45</u>
Interim Amount of Reimbursement Paid as Actual, Reasonable, and Necessary:	<u>\$13,989.18</u>
Total Amount of Unpaid Compensation and Reimbursement:	<u>\$553,608.41</u>

This is a                                       Interim Application                                      X   Final Application

**List of Professionals Providing Services:**

<b><u>Timekeeper Name</u></b>	<b><u>Title</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
<b>Second Interim Fee Application October 1, 2006 through December 26, 2006</b>				
R. Manzo	Executive Director	330.00	\$ 555	\$ 183,150.00
J. Borow	Executive Director	17.50	555	9,712.50
D. Galfus	Executive Director	304.45	530	161,358.50
V. DePiro	Consultant	172.40	450	77,580.00
J. Surdoval	Consultant	629.20	450	283,140.00
F. Nicastro	Consultant	62.50	405	25,312.50
B. Aronson	Consultant	20.50	395	8,097.50
J. Schwendeman	Consultant	276.00	375	103,500.00
R. Zaidman	Consultant	360.50	350	126,175.00
C. Walker	Research	3.75	175	656.25
M. Desalvio	Research	12.00	150	1,800.00
<b><i>Total Second Interim Fee Application</i></b>		<b><u>2,188.80</u></b>		<b><u>\$ 980,482.25</u></b>

**Total Postpetition Period June 2, 2006 through December 26, 2006**

R. Manzo	Executive Director	479.40	\$ 555	\$ 266,067.00
J. Borow	Executive Director	17.50	555	9,712.50
E. Ordway	Executive Director	5.00	555	2,775.00
D. Galfus	Executive Director	598.35	530	317,125.50
V. DePiro	Consultant	172.40	450	77,580.00
J. Surdoval	Consultant	1,291.30	450	581,085.00
F. Nicastro	Consultant	62.50	405	25,312.50
B. Aronson	Consultant	20.50	395	8,097.50
J. Schwendeman	Consultant	276.00	375	103,500.00
R. Zaidman	Consultant	819.60	350	286,860.00
C. Walker	Research	4.50	175	787.50
M. Desalvio	Research	27.50	150	\$ 4,125.00
<b><i>Total Postpetition Period</i></b>		<b><u>3,774.55</u></b>		<b><u>\$ 1,683,027.50</u></b>

**Expenses:**

**Second Interim Fee Application October 1, 2006 through December 26, 2006**

Airfare & Train	\$ 364.50
Hotels	678.08
Meals	710.91
Mileage	1,053.76
Parking & Tolls	3,595.00
Postage	318.11
Research	168.29
Taxi & Auto Rental	439.00
Telecommunication	4,331.32

***Second Interim Fee Application*** **\$ 11,658.97**

**Total Postpetition Period June 2, 2006 through December 26, 2006**

Airfare & Train	\$ 364.50
Copies	20.40
Hotels	678.08
Meals	900.91
Mileage	2,705.60
Parking & Tolls	7,606.00
Postage	340.66
Research	214.86
Taxi & Auto Rental	962.56
Telecommunication	6,047.97

***Total Postpetition Period*** **\$ 19,841.54**

**Summary of Monthly Statements:**

Period	Total Fees Requested	Total Expenses Requested	Fees Paid	Expenses Paid	Unpaid Fees and Expenses
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**First Interim Fee Application June 2, 2006 through September 30, 2006**

Monthly Statement 6/2/06 - 6/30/06	\$ 144,220.00	\$ 1,747.87	\$ 144,220.00	\$ 1,747.87	\$ -
Monthly Statement 7/1/06 - 7/31/06	122,922.25	1,141.21	122,922.25	1,141.21	-
Monthly Statement 8/1/06 - 8/31/06	256,464.50	3,492.52	256,464.50	3,492.52	-
Monthly Statement 9/1/06 - 9/30/06	178,938.50	1,800.97	178,938.50	1,800.97	-
<b><i>First Interim Fee Application</i></b>	<b>\$ 702,545.25</b>	<b>\$ 8,182.57</b>	<b>\$ 702,545.25</b>	<b>\$ 8,182.57</b>	<b>\$ -</b>

**Second Interim Fee Application October 1, 2006 through December 26, 2006**

Monthly Statement 10/1/06 - 10/31/06	\$ 258,130.25	\$ 3,772.86	\$ 206,504.20	\$ 3,772.86	\$ 51,626.05
Monthly Statement 11/1/06 - 11/30/06	282,777.50	2,033.75	226,222.00	2,033.75	56,555.50
Monthly Statement 12/1/06 - 12/26/06	439,574.50	5,852.36	-	-	445,426.86
<b><i>Second Interim Fee Application</i></b>	<b>\$ 980,482.25</b>	<b>\$ 11,658.97</b>	<b>\$ 432,726.20</b>	<b>\$ 5,806.61</b>	<b>\$ 553,608.41</b>

**Total Postpetition Period**

<b>\$ 1,683,027.50</b>	<b>\$ 19,841.54</b>	<b>\$ 1,135,271.45</b>	<b>\$ 13,989.18</b>	<b>\$ 553,608.41</b>
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Special Financial Advisor to the RCM Trustee

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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**SECOND INTERIM AND FINAL APPLICATION OF CAPSTONE ADVISORY GROUP,  
LLC FOR ALLOWANCE AND PAYMENT OF COMPENSATION FOR SERVICES  
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL  
FINANCIAL ADVISOR TO THE CHAPTER 11 TRUSTEE FOR REFCO CAPITAL  
MARKETS, LTD. AND OTHER MATTERS AS REQUESTED  
FOR THE PERIOD OCTOBER 1, 2006 THROUGH DECEMBER 26, 2006**

TO THE HONORABLE ROBERT D. DRAIN,  
UNITED STATES BANKRUPTCY JUDGE:

Capstone Advisory Group, LLC (“Capstone”), special financial advisor to Marc S. Kirschner, in his capacity as chapter 11 trustee (the “RCM Trustee”) for the estate of Refco Capital Markets, Ltd. (“RCM”), hereby submits this second interim and final application (the “Fee Application”) pursuant to sections 330 and 331 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (as amended, the “Bankruptcy Code”), and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for allowance and payment, to the extent not already received, of compensation in the amount of \$980,482.25 (the “Fees”) for professional services rendered on behalf of the RCM Trustee in connection with the bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Chapter 11 Cases”) and the chapter 7

bankruptcy case of Refco LLC (the “Refco LLC Case”, and together with the Chapter 11 Cases, the “Bankruptcy Cases”; the debtors and debtors in possession in the Bankruptcy Cases are hereinafter collectively referred to as the “Refco Debtors”) for the period October 1, 2006 through December 26, 2006 (the “Application Period”), and for reimbursement of actual and necessary expenses incurred during the Application Period in connection with the rendition of such professional services in the amount of \$11,658.97 (the “Expenses”).<sup>1</sup> Capstone also seeks final approval of compensation in the amount of \$1,683,027.50 and reimbursement of expenses in the amount of \$19,841.54 for the entire postpetition period, and in support Capstone respectfully represents as follows:

## **BACKGROUND**

### **A. Bankruptcy Cases of the Refco Debtors**

2. On October 17, 2005 (the “Petition Date”), Refco Inc. (“Refco”) and most of the other Refco Debtors each filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.<sup>2</sup> Except in the case of Refco LLC, the Refco Debtors’ cases are being administered jointly, for procedural purposes only, under Case No. 05-60006 (RDD).<sup>3</sup>

3. Prior to the Petition Date, the Refco Debtors and certain of their non-debtor affiliates provided execution and clearing services for exchange-traded derivatives and operated

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<sup>1</sup> Capstone reserves the right to seek allowance and payment of additional fees and expenses incurred during the Application Period for which approval has not been obtained or for which approval has not previously been sought.

<sup>2</sup> Most of the Refco Debtors filed for relief on October 17, 2005. A few filed petitions thereafter. Refco LLC filed a voluntary petition under Chapter 7 on November 25, 2005. Westminster-Refco Management LLC, Refco Managed Futures LLC and Lind-Waldock Securities LLC filed voluntary petitions under Chapter 11 on June 5, 2006.

<sup>3</sup> The Refco LLC case is not being administered jointly and is Case No. 05-60134 (RDD).

as a major provider of prime brokerage services in the fixed income and foreign exchange markets. In 2004, the Refco Debtors were the largest provider of customer transaction volume to the Chicago Mercantile Exchange, the largest derivatives exchange in the United States.

4. The Refco Debtors' operations were complex and included both regulated domestic entities (such as Refco LLC) and non-regulated entities (such as RCM).

5. On October 10, 2005, Refco announced that it had discovered through an internal review that an entity controlled by Mr. Phillip R. Bennett, Refco's then Chief Executive Officer and Chairman of Refco's Board of Directors, was indebted to the Refco Debtors in the amount of \$430 million. At the request of Refco's Board of Directors, Mr. Bennett took a leave of absence, and Refco appointed a new President and Chief Executive Officer. Subsequently, on or about October 11, 2005, Mr. Bennett was arrested and charged with various crimes.

6. The public disclosure of these events precipitated a crisis of confidence among customers, counterparties and others with whom Refco and its subsidiaries and affiliates did business. This resulted in a high number of customer defections and massive disruptions in the operations and businesses of the Refco Debtors, including RCM.

7. On October 13, 2005, after experiencing a very high number of customer withdrawals, Refco announced that – while the ability of its regulated subsidiaries to operate was substantially unaffected by the situation concerning Mr. Bennett, and business would be able to continue to be conducted in the ordinary course – the liquid assets of RCM, which represented a material portion of the business of the Refco Debtors, were no longer sufficient to accommodate customer withdrawals.



8. Consequently, a 15-day moratorium on the withdrawal of customer accounts from RCM was imposed in an attempt to stabilize the value of the Refco Debtors' businesses. These efforts were unsuccessful and culminated in the Refco Debtors filing for bankruptcy protection.

**B. RCM**

9. RCM, an unregulated limited liability company organized under the laws of Bermuda, constituted one of the largest businesses of the Refco Debtors.

10. On December 12, 2005, a group of customers holding in the aggregate approximately \$500 million in customer claims, together with certain other parties who subsequently joined the Conversion Motion (defined below), (collectively, the "Moving Customer Group") filed the Motion to Convert Refco Capital Markets, Ltd.'s Chapter 11 Proceeding To A Chapter 7 Stockbroker Liquidation Under Subchapter III (the "Conversion Motion"). Several objections to the Conversion Motion were filed, and the Court held five days of hearings thereon.

11. On March 14, 2006, this Court ruled preliminarily that RCM is a stockbroker and, as such, RCM's bankruptcy case should be converted to a stockbroker liquidation under subchapter III of chapter 7 of the Bankruptcy Code. As of the date hereof, this Court has deferred entry of an order converting RCM's bankruptcy case.

12. That same day, the Court directed that the U.S. Trustee appoint a chapter 11 trustee in the RCM case, with a view to having the chapter 11 trustee primarily focus on a resolution of the issues surrounding the Conversion Motion as a precursor to achieving a global resolution for the Bankruptcy Cases. An order to that effect was entered on March 22, 2006 (the "Trustee Appointment Order"). [Docket No. 1535].

13. On April 10, 2006, the U.S. Trustee filed its Notice of Appointment of Chapter 11 Trustee for Estate of Refco Capital Markets, Ltd., appointing Marc S. Kirschner as the RCM Trustee.

#### **RETENTION OF CAPSTONE ADVISORY GROUP, LLC**

14. On June 16, 2006, the RCM Trustee applied to this Court for an order authorizing the RCM Trustee to retain and employ Capstone, nunc pro tunc, to June 2, 2006, as special financial advisor for the RCM Trustee in the Bankruptcy Cases (the “Employment Application”) pursuant to Bankruptcy Code section 327 and applicable bankruptcy and local rules. The Employment Application was supported by the Declaration of David Galfus.

15. On July 17, 2006, this Court entered a final order (the “Final Retention Order”) approving the Employment Application.

#### **JURISDICTION AND VENUE**

16. The Court has jurisdiction over the Fee Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Bankruptcy Cases and proceedings relating to the Fee Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **COMPENSATION PROCEDURES**

17. On December 13, 2005, this Court entered the Final Order Under 11 U.S.C. §§ 105 and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Initial Interim Payment Order”). On June 9, 2006, this Court entered a Supplemental Order Under 11 U.S.C. §§ 105 and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the “Supplemental Payment Order”, and together with the Initial Interim Payment Order, the “Interim Payment Order”). Pursuant to the Interim Payment Order, which governs interim compensation for Capstone and

other professionals for services rendered and expenses incurred in the Bankruptcy Cases, Capstone is submitting this Fee Application to the Refco Debtors (and their counsel), the U.S. Trustee, counsel to the Official Committee of Unsecured Creditors (the “Committee”), and counsel for the agent to the secured lenders of certain Refco Debtors (the “Agent”).

18. Capstone has prepared this Fee Application in accordance with (i) the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, dated January 30, 1996 (the “U.S. Trustee’s Guidelines”), (ii) the Amended Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated April 19, 1995 (the “Local Guidelines”, and together with the U.S. Trustee’s Guidelines, the “Guidelines”), and (iii) the Interim Payment Order. A certification from David Galfus regarding compliance with the Guidelines is attached as Exhibit A.

19. Pursuant to the terms of the Interim Payment Order, any professional whose retention is approved by this Court under Bankruptcy Code section 327 may seek monthly compensation in accordance with the procedures established in the Interim Payment Order. If no objection to a monthly statement is filed within thirty-five (35) days of the date of serving such monthly statement, then the Refco Debtors shall promptly pay such professional eighty percent (80%) of the fees and one hundred percent (100%) of expenses set forth in the applicable monthly statement (the “Interim Payments”).

20. Pursuant to the terms of the Interim Payment Order, approximately every one hundred twenty (120) days, but not more than every one hundred fifty (150) days, each professional shall file with the Court an application for interim or final Court approval and allowance of the compensation and reimbursement of expenses requested.

## **COMPENSATION AND REIMBURSEMENT REQUESTED**

21. This Fee Application covers the period October 1, 2006 through December 26, 2006. By this Fee Application, Capstone requests that this Court authorize and approve on an interim basis: (a) allowance of compensation for professional services rendered by Capstone during the Application Period on behalf of the RCM Trustee in the amount of \$980,482.25 representing 100% of the fees earned, with payment of such fees to the extent not previously paid, and (b) allowance of actual and necessary expenses incurred by Capstone during the Application Period in connection with the rendition of such professional services in the amount of \$11,658.97, representing 100% of expenses incurred by Capstone during the Application Period, with payment of such expenses to the extent not previously paid.

22. Under the Interim Payment Order, for the period October 1, 2006 through November 30, 2006, the Refco Debtors were authorized to pay Capstone an aggregate of \$432,726.20, representing 80% of total fees earned (\$540,907.75) plus 100% of expenses incurred (\$5,806.61) during the such period. Of the requested amounts, Capstone has received \$438,532.81.

23. Under the Interim Payment Order, for the period December 1, 2006 through December 26, 2006, the Refco Debtors will be authorized to pay Capstone \$351,659.60 representing 80% of fees earned (\$439,574.00) plus 100% of expenses incurred (\$5,852.36) during the monthly statement periods, assuming no objections are received.

24. Capstone expended 2,188.80 hours during the Application Period. The rates charged by Capstone for services rendered as the RCM Trustee's Financial Advisors are based on Capstone's regular hourly rates applicable to the performance of advisory services unrelated to the Bankruptcy Cases. The summary preceding this Fee Application contains a list of the professionals who have performed services on behalf of the RCM Trustee during the Application

Period, as well as a breakdown of the hours, hourly rates and fees attributable to those individuals during this Application Period.

25. Capstone maintains computerized records of the time expended by consultants and paraprofessionals in the rendition of professional services. Capstone's daily time records for each monthly segment of the Application Period, allocated by category, listing (i) the name of the consultant or paraprofessional, (ii) the date on which the services were performed, (iii) the amount of time expended performing the services, and (iv) the nature of the services performed are attached to this Fee Application as part of Exhibit E for the period of October 1, 2006 through December 26, 2006. Also included in Exhibit E for the periods of October 1, 2006 through December 26, 2006, are schedules that set forth (a) the number of hours expended by the individual consultants and paraprofessionals, (b) the standard hourly rate that Capstone charges for the same or similar services of each consultant or paraprofessional in matters not related to the Bankruptcy Cases, and (c) the total fees attributable to all such services rendered by each consultant or paraprofessional.

26. Capstone also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with its rendition of its services. The summary preceding this Fee Application includes a breakdown of expenses incurred during the Application Period. The detail for such expenses is attached to this Fee Application as part of Exhibit E for the period of October 1, 2006 through December 26, 2006.

### **SUMMARY OF SERVICES RENDERED**

27. The services rendered by Capstone during the Application Period have been segregated into several distinct categories in accordance with the U.S. Trustee's Guidelines. Due to the complexity of the issues involved in the Bankruptcy Cases, Capstone deemed it

appropriate to utilize additional project categories to facilitate the allocation of time expended in the Bankruptcy Cases. Each such category is described in more detail below and with reference to the detailed time entries annexed hereto in Exhibits B, C, D and E.

**C. Matters Greater than \$50,000.**

**Plan Diligence (General)**  
**(Fees Sought: \$647,420.50; Hrs. Billed: 1,447.85)**

28. The majority of services performed by Capstone during the Application Period in this category related to work done as part of the evaluation and structuring of various potential settlement alternatives and various analyses performed for Capstone's court issued report on Refco's Distributable Value. Among other items, Capstone was involved in the analysis of plan strategies and issues and reporting the findings from such analyses to the RCM Trustee and counsel.

29. A summary of the individuals providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**Plan Administration Transition**  
**(Fees Sought: \$288,557.00; Hrs. Billed: 619.50)**

30. The services performed by Capstone during the Application Period in this category related to the transition work, as requested, associated with Capstone's retention as Plan Administrator, commencing on the Plan's effective date (December 26, 2006), including various analyses, budgeting and meetings.

31. A summary of the individuals providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**D. Matters Less than \$50,000.**

**Fee Applications (Preparation)**  
**(Fees Sought: \$25,344.00; Hrs. Billed: 66.20)**

32. The services performed by Capstone in this category include actual time spent preparing the September, October and November 2006 monthly statements and Capstone's first interim fee application for the period of June 2 through September 30, 2006.

33. A summary of the individuals providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**Case Administration**  
**(Fees Sought: \$8,196.25; Hrs. Billed: 29.95)**

34. The time expended by Capstone in this category relates primarily to general administrative matters typical of any large chapter 11 case, including matters relating to general communications with customers and other parties in interest concerning the Bankruptcy Cases, the coordination of creditors' meetings, communications with the RCM Trustee concerning general aspects of the Bankruptcy Cases, and general preparation for hearings and meetings.

35. A summary of the individuals providing services in the case administration category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**Litigation (Rogers)**  
**(Fees Sought: \$7,734.50; Hrs. Billed: 17.90)**

36. The services performed by Capstone during the Application Period in this category included attendance at the Rogers trial and analysis of materials concerning proposed settlement of certain pending litigation;

37. A summary of the individuals providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**Plan Diligence (Intercompany)**  
**(Fees Sought: \$2,880.00; Hrs. Billed: 6.40)**

38. The services performed by Capstone during the Application Period in this category included analyzing agreements and reconciling intercompany amounts relating to foreign accounts;

39. A summary of the individuals providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**Travel Time**  
**(Fees Sought: \$350.00; Hrs. Billed: 1.00)**

40. The entry in this category represents time expended while traveling for purposes relating to the Bankruptcy Cases but not working on matters related to the Bankruptcy Cases or any other matter.

41. A summary of the individual providing services in this category during the Application Period and the fees requested on account of such services is incorporated in Exhibit E attached hereto.

**IDENTIFICATION INFORMATION**

42. Capstone is a national restructuring firm with considerable expertise in insolvency matters, having participated in more than 500 restructuring or forensic cases, including some of the largest bankruptcy proceedings and out-of-court restructurings in the country, as well as



numerous middle-market cases. Identification information for the professionals who principally worked on the Bankruptcy Cases during the Application Period is supplied below.

43. David Galfus is an Executive Director of Capstone specializing in financial restructuring and insolvency matters. Mr. Galfus has over 20 years of work experience, with nearly 10 years experience in financial restructuring and more than 10 years in public accounting and he is a Certified Public Accountant.

44. Robert Manzo is an Executive Director of Capstone specializing in financial restructuring. Mr. Manzo has over 20 years of restructuring experience and has advised major corporations, money center and investment banks and other creditors on numerous transactions. He is a Certified Public Accountant.

45. Jay Borow is an Executive Director of Capstone specializing in financial restructuring. Mr. Borow has over 33 years of work experience. He has over twenty years of experience in the areas of bankruptcy, turnaround and restructuring as well as forensic and financial investigations, and litigation consulting. He is a Certified Public Accountant.

46. Jack Surdoval is a Managing Director with Capstone specializing in financial restructuring and insolvency matters, with nearly 20 years work experience. Mr. Surdoval holds a Bachelor of Science degree in Accounting from Manhattan College. He is a Certified Public Accountant.

47. Valerie DePiro is a Managing Director with Capstone specializing in financial restructuring and insolvency matters, with over 17 years work experience. Ms. DePiro holds an A.B. in Mathematics and Economics from Washington University in St. Louis and a M.B.A. from Tulane University in New Orleans. She is a Certified Public Accountant.

48. Frank Nicastro is a Director with Capstone specializing in financial restructuring and insolvency matters, with over 40 years work experience. Mr. Nicastro holds a Bachelor of Science degree in Economics from the University of Pennsylvania's Wharton School.

49. Jeff Schwendeman is a Director with Capstone specializing in financial and turnaround advisory services for both companies and creditors. He has over 20 years of work experience. Mr. Schwendeman holds a BA in Accounting/Economics from Marietta College and an MBA in Finance/Accounting from Regis University. He is a Certified Public Accountant.

50. Ron Zaidman is an Associate Director with Capstone specializing in financial restructuring and insolvency matters, with over seven years of restructuring experience. Mr. Zaidman holds a Bachelor of Science degree in Accounting from Binghamton University. He is a Certified Public Accountant.

#### **SUPPORT FOR ALLOWANCE OF COMPENSATION**

51. The Bankruptcy Code sets forth the legal standards for awarding compensation to professionals employed by the Debtors. The format for fee applications is set forth in the Compensation Guidelines for Professionals in the United States Bankruptcy Court for the Southern District of New York.

52. Under the Bankruptcy Code, the Court may award professionals employed by the estate of RCM reasonable compensation for actual, necessary services rendered by such professionals based on the nature, extent and value of services rendered, time spent on such services and the cost of comparable services other than in a bankruptcy case. Furthermore, the Court may award reimbursement for actual, necessary expenses.

53. Under the “lodestar” approach, the Court should consider the number of hours of service reasonably devoted to the case multiplied by the professional’s rates. Courts frequently

consider the specific “lodestar” factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5<sup>th</sup> Cir. 1974). These lodestar tests were adopted by the Fourth Circuit in Barber v. Kimbrells, Inc., 577 F.2d 216, 226 (4<sup>th</sup> Cir.), cert. denied, 439 U.S. 934 (1978), and in Anderson v. Morris, 658 F.2d 246, 249 (4<sup>th</sup> Cir. 1981), where the Fourth Circuit held that the District Court should employ the lodestar approach, and then adjust the fees on the basis of the remaining Johnson factors in the case. The following are the Johnson factors:

- a) the time and labor required;
- b) the novelty and difficulty of the questions;
- c) the skill requisite to perform the legal service properly;
- d) the preclusion of other employment by the attorney due to acceptance of the case;
- e) the customary fee;
- f) whether the fee is fixed or contingent;
- g) time limitations imposed by the client or the circumstances;
- h) the amount involved and the results obtained;
- i) the experience, reputation and ability of the attorneys;
- j) the “undesirability” of the case;
- k) the nature and length of the professional relationship with the client; and
- l) awards in similar cases.

Johnson, 488 F.2d at 717-719; Barber, 577 F.2d at 226, n.28; Anderson, 658 F.2d at 248, n.2. Capstone believes that the Johnson factors are reasonably applicable to services it provides to the estate of RCM.

### **AMOUNT REQUESTED**

54. Capstone deems the fair and reasonable value of its Fees for the Application Period to be \$980,482.25. For purposes of this Fee Application, Capstone has computed the Fees on the basis of its regular hourly rates applicable to the performance of advisory services

unrelated to the Bankruptcy Cases. Capstone's average hourly billing rate, or "lodestar" rate (excluding paraprofessionals), during the Application Period was \$450.07.

55. In accordance with the factors enumerated in section 330 of the Bankruptcy Code, the amount requested is fair and reasonable given (a) the complexity of the Bankruptcy Cases, (b) the time expended in rendering services in connection with the Bankruptcy Cases, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services rendered in cases not under this title.

56. During the Application Period, Capstone's standard hourly billing rates ranged from \$350 to \$555 per hour for advisors working on this matter, and \$150 to \$175 per hour for paraprofessionals working on this matter. Capstone has made every effort to have services performed by qualified consultants charging the lowest hourly rates consistent with the level of service and efficiency required. In addition, the rates charged by Capstone for services rendered as the RCM Trustee's general bankruptcy advisors are based on Capstone's regular hourly rates applicable to the performance of advisory services unrelated to the Bankruptcy Cases.

57. In accordance with Bankruptcy Rule 2016, Bankruptcy Code section 504, and the Guidelines, no payments (other than those approved by the Court and as stated below) have heretofore been made or promised to Capstone for services rendered or to be rendered in any capacity whatsoever in connection with the Bankruptcy Cases. No agreement or understanding exists between Capstone and any other person or entity for a division of compensation or reimbursement received or to be received herein or in connection with the Bankruptcy Cases.

58. Pursuant to the Interim Payment Order, on February 2, 2007 and February 16, 2007, Capstone received payments of \$210,277.06 and \$228,255.75, respectively, during the Application Period in respect of its monthly statements for the period October 1, 2006 through

November 30, 2006, representing 80% of fees earned, and 100% of expenses incurred during that period. Accordingly, in this Fee Application, Capstone seeks approval of the amounts already paid and authorization and payment of \$108,181.55 which represents the remaining 20% unpaid balance for the fees earned from October 1, 2006 through November 30, 2006.

59. Capstone has not received payments in respect of its December 1, 2006 through December 26, 2006 monthly statement. Assuming no objections are received, Capstone hereby seeks approval, authorization and payment of \$439,574.50, which were the total fees earned during the period covered by the December 1, 2006 through December 26, 2006 monthly statement, and reimbursement of the \$5,852.36 of expenses incurred during that period.

60. Capstone also seeks final approval of compensation in the amount of \$1,683,027.50 in fees and reimbursement of expenses in the amount of \$19,841.54 for the entire postpetition period from June 2, 2006 through December 26, 2006.

61. The expenses incurred by Capstone, as set forth herein, are reasonable and necessary charges for items such as travel, parking/tolls, long distance telephone calls, facsimiles, photocopying, research and delivery services. Capstone incurred delivery charges when such delivery was more economical or when prompt delivery services was necessary in a given circumstance.

62. Capstone charges for these expenses are consistent with those charged to Capstone's other bankruptcy clients, and are consistent with charges by Capstone for non-bankruptcy clients.

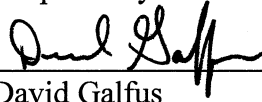
### **CONCLUSION**

**WHEREFORE**, Capstone respectfully requests this Court enter an order: (i) approving this Final Fee Application for final allowance of compensation for professional services rendered

by Capstone in the amount of \$1,683,027.50 and reimbursement of actual and necessary expenses incurred in the amount of \$19,841.54; (ii) awarding Capstone \$980,482.25 as an interim allowance of compensation with respect to the Fees; (iii) awarding Capstone \$11,658.97 as interim reimbursement of the Expenses; (iv) determining that the aggregate award of compensation and reimbursement of expenses to Capstone in the Bankruptcy Cases in the amount of \$992,141.22 constitutes an interim award, (v) authorizing and directing the Refco Debtors to pay to Capstone any amounts not already paid in respect of the Fees and Expenses and (vi) granting such other and further relief as the Court may deem proper.

Dated: Saddle Brook, New Jersey  
February 26, 2007

Respectfully Submitted,



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