

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)  
Honorable Robert D. Drain

**SUPPLEMENTAL FEE APPLICATION OF HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC. AS INVESTMENT BANKER TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF REFCO INC. AND ITS AFFILIATED DEBTORS AND DEBTORS IN POSSESSION FOR FINAL ALLOWANCE OF REIMBURSEMENT OF ACTUAL AND NECESSARY LEGAL FEES AND EXPENSES INCURRED IN PROSECUTING ITS AMENDED FOURTH INTERIM AND FINAL FEE APPLICATION**

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Name of Applicant: Houlihan Lokey Howard & Zukin Capital, Inc.  
Authorized to Provide Professional Services To: Official Committee of Unsecured Creditors, the Additional Official Committee of Unsecured Creditors and the Joint Sub-Committee of Official Committees  
Date of Order Authorizing Employment: October 28, 2005

**Final Application Period**

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Period For Which Compensation is Sought: October 28, 2005 through December 12, 2007  
Amount of Fees Sought: \$0.00  
Amount of Expense Reimbursement Sought: \$450,897.95

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This is a(n):  
 Interim Application  
 Supplemental Application  
 Final Application

## SUMMARY OF FEES

| Fee Application<br>Filing Date &<br>Docket Number | Total Fees<br>Requested | Total Expense<br>Requested | Amount of<br>Fees Awarded | Amount of<br>Expenses<br>Awarded |
|---|-------------------------|----------------------------|---------------------------|----------------------------------|
| Final Fee App.<br>3/26/07<br>DN 4748              | \$11,661,155.91         | \$332,229.21               | \$7,796,639.78            | \$332,229.21 <sup>(1)</sup>      |

## EXPENSE SUMMARY

| Expense Category  | Sought in<br>Supplemental App. |
|---|--------------------------------|
| Electronic research (incl. Westlaw, Lexis and Pacer)            | \$1587.04                      |
| Out-of-town accommodations (incl. internet charges)             | \$4,297.65                     |
| Outside professional services                                   | \$1,013.60                     |
| Photocopying (incl. outside copy services)                      | \$2323.45                      |
| Travel (incl. airfare, taxi, ground transportation and parking) | \$5413.37                      |
| Long distance telephone charges                                 | \$334.63                       |
| Facsimile   | \$18.33                        |
| Court reporting services  | \$2,257.50                     |
| Meals   | \$1,172.62                     |
| Courier and messenger service                                   | \$376.01                       |
| Filing fees   | \$50.00                        |
| <b>TOTAL</b>  | <b>\$18,844.20</b>             |

**PROFESSIONALS PROVIDING LEGAL SERVICES TO HOULIHAN LOKEY**

| <b>Timekeeper Name</b> | <b>Title</b>       | <b>Year Admitted to Practice</b> | <b>Hours</b>  | <b>Rate</b> | <b>Value</b>        |
|------------------------|--------------------|----------------------------------|---------------|-------------|---------------------|
| Richard Chesley        | Partner            | 1985                             | 171.00        | \$725.00    | \$123,975.00        |
| Paul Harner            | Partner            | 1990                             | 4.00          | \$750.00    | \$3,000.00          |
| Harvey Strickon        | Of Counsel         | 1972                             | 1.50          | \$815.00    | \$1,222.50          |
|                        |                    |                                  | 1.00          | \$855.00    | \$855.00            |
| Gregory Otsuka         | Associate          | 1999                             | 219.50        | \$530.00    | \$116,335.00        |
|                        |                    |                                  | 246.00        | \$565.00    | \$138,990.00        |
| Kimberly Newmarch      | Associate          | 2000                             | 1.50          | \$515.00    | \$772.50            |
|                        |                    |                                  | 3.50          | \$555.00    | \$1,942.50          |
| Christian Auty         | Associate          | 2005                             | 18.00         | \$420.00    | \$7,560.00          |
| Michael Stefanelli     | Associate          | 2007<br>(pending)                | 11.00         | \$325.00    | \$3,575.00          |
| Ruth Rosen             | Paralegal          | N/A                              | 29.00         | \$270.00    | \$7,830.00          |
| Pamela Randall         | Paralegal          | N/A                              | 1.00          | \$190.00    | \$190.00            |
| Benjamin Everard       | Summer Associate   | N/A                              | 63.75         | \$175.00    | \$11,156.25         |
| Carrie Frondorf        | Summer Associate   | N/A                              | 16.00         | \$175.00    | \$2,800.00          |
| Nevin Gewertz          | Summer Associate   | N/A                              | 36.25         | \$175.00    | \$6,343.75          |
| Susan McHugh           | Summer Associate   | N/A                              | 15.00         | \$175.00    | \$2,625.00          |
| Frank Dagostino        | Support Operations | N/A                              | 2.50          | \$140.00    | \$350.00            |
| Emilie Small           | Librarian          | N/A                              | 1.50          | \$150.00    | \$225.00            |
| Scott Snipes           | Librarian          | N/A                              | 2.75          | \$165.00    | \$453.75            |
| Jeremy Cooper          | Practice Support   | N/A                              | 1.75          | \$250.00    | \$437.50            |
| Yakov Zylbershlag      | Practice Support   | N/A                              | 3.50          | \$280.00    | \$980.00            |
|                        |                    |                                  | 1.50          | \$290.00    | \$435.00            |
| <b>Total</b>           |                    |                                  | <b>846.50</b> |             | <b>\$432,053.75</b> |

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**SUPPLEMENTAL FEE APPLICATION OF HOULIHAN LOKEY HOWARD & ZUKIN  
CAPITAL, INC. AS INVESTMENT BANKER TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF REFCO INC. AND ITS AFFILIATED DEBTORS AND  
DEBTORS IN POSSESSION FOR FINAL ALLOWANCE OF REIMBURSEMENT OF  
ACTUAL AND NECESSARY LEGAL FEES AND EXPENSES INCURRED IN  
PROSECUTING ITS AMENDED FOURTH INTERIM AND FINAL FEE  
APPLICATION**

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

Houlihan Lokey Howard & Zukin Capital, Inc. ("Houlihan Lokey"), investment banker to the Official Committee of Unsecured Creditors (the "Committee") of Refco, Inc. et al. (the "Debtors," the "Company," or "Refco"), hereby makes this Supplemental Fee Application for Final Allowance of Reimbursement of Actual and Necessary Legal Fees and Expenses Incurred in Prosecuting its Amended Fourth Interim and Final Fee Application (the "Supplemental Application"). By this Supplemental Application Houlihan Lokey seeks reimbursement for the fees and expenses incurred by its counsel, Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), in prosecuting the fee application of Houlihan Lokey. In support of this Supplemental Application, Houlihan Lokey respectfully represents as follows:

**INTRODUCTION**

1. This Supplemental Application is made pursuant to (i) sections 328(a), 330(a) and 1103(a) of the Bankruptcy Code, (ii) Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (iii) the Court's Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Administrative

Order”), (iv) the Court’s Order, authorizing Employment and Retention of Houlihan Lokey Howard & Zukin Capital, Inc. as the Official Committee of Unsecured Creditors’ Investment Banker Effective October 28, 2005 (the “Employment Order”), (vi) the Court’s Order Authorizing Amendment of Employment and Retention of Houlihan Lokey Howard & Zukin Capital, Inc. as Committee’s Investment Banker (the “Employment Order Amendment”), entered by this Court on March 20, 2006, and (vii) the Court’s Order partially authorizing the Second Amendment of Employment and Retention of Houlihan Lokey Howard & Zukin Capital, Inc. (the “Second Employment Order Amendment”).

2. By this Supplemental Application, Houlihan Lokey requests final allowance and approval of its expenses in the amount of \$450,897.95, which is comprised of legal fees of \$432,053.75 and related costs in the amount of \$18,844.20 that were incurred by Paul Hastings in the course of prosecuting and defending the Amended Fourth Interim and Final Fee Application of Houlihan Lokey Howard & Zukin Capital, Inc. as Investment Banker to the Official Committee of Unsecured Creditors of Refco Inc. and its Affiliated Debtors and Debtors in Possession for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses for the Period October 28, 2005 through December 26, 2006 (the “Final Fee Application”).

## **BACKGROUND**

3. On October 17, 2005 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). On October 28, 2005, the United States Trustee duly appointed the Committee.

4. This Court has jurisdiction over this Supplemental Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §

157(b). The statutory predicates for the relief requested herein are 11 U.S.C. §§ 328(a), 330(a) and 1103(a).

### **RETENTION OF HOULIHAN LOKEY**

5. On October 28, 2005, the Committee retained Houlihan Lokey to act as its investment banker pursuant to the terms of the engagement letter between the Committee and Houlihan Lokey dated November 22, 2005 (the “Engagement Letter”). Houlihan Lokey’s retention was approved on a final basis on February 1, 2006, upon the entry of the Employment Order.

6. On February 13, 2006, the Committee filed an application with this Court (the “First Employment Amendment Application”) to amend the terms of Houlihan Lokey’s Monthly Fees (as defined in the Engagement Letter) for the third and fourth months of the engagement and increase the Monthly Fee for those months from \$150,000 per month to \$250,000 per month. On March 20, 2006, this Court entered the Employment Order Amendment, which approved the First Employment Amendment Application.

7. The Committee and Houlihan Lokey reached an agreement on an additional amendment to Houlihan Lokey’s compensation (the “Second Fee Amendment”), which, among other things, entitled Houlihan Lokey to an increase in its Transaction Fee of \$7 million.

8. On October 31, 2006, in the Second Employment Order Amendment this Court partially approved the Second Amendment Application, and granted Houlihan Lokey (i) the payment of the BAWAG Role Monthly Fee of \$75,000 *nunc pro tunc* beginning July 15, 2006 and (ii) the right to seek the payment of the remaining amounts set forth in the Second Fee Amendment at that time final fee applications are filed in these cases. Thereafter, RCM filed an Objection on April 18, 2007 regarding additional Transaction Fee (tab 18).

9. Houlihan Lokey filed on March 26, 2007 its Final Fee Application in which it sought total compensation for its entire engagement period of \$11,661,155.91 in fees and \$332,229.21 in expenses.

10. On April 18, 2007, the RCM Plan Administrator filed a Limited Objection to the Final Fee Application (the "Limited Objection") opposing the \$7 million increase in Houlihan Lokey's Transaction Fee that had been agreed to by the Committee and Houlihan Lokey in a second amendment to Houlihan Lokey's original retention agreement (the "Second Amendment"). The Refco Plan Administrator joined the Limited Objection on April 30, 2007.

11. On or about December 26, 2006, Houlihan Lokey retained the services of Paul Hastings as legal counsel to prosecute the Final Fee Application in the face of the Limited Objection.

12. Discovery related to the Final Fee Application was conducted with three sets of requests for production served by the RCM Plan Administrator, one set of requests for production served by Houlihan Lokey and four depositions.

13. Houlihan Lokey filed its Response to the Limited Objection of the RCM Plan Administrator and Pre-Hearing Brief (the "Pre-Hearing Brief") on September 27, 2007, arguing that its compensation was reasonable as required by Section 330 of the Bankruptcy Code. On the same day, the Plan Administrators filed its Trial Brief Regarding Houlihan Fee Applications (the "Trial Brief"), objecting to the \$7 million increase of the Transaction Fee and proposing instead a \$2 million fee.

14. On October 1 and 2, 2007, the Court conducted an evidentiary hearing on the Final Fee Application and the Limited Objection at which the RCM Plan Administrator presented the direct testimony of four witnesses and Houlihan Lokey presented four witnesses.

The Court issued its findings of fact and rulings of law at the conclusion of the hearing on October 2, 2007

15. On November 7, 2007, the Court entered an Order Granting in Part and Denying in Part Houlihan Lokey's Fee Application, wherein it approved total fees for Houlihan Lokey in the amount of \$7,796,639.78 and total expenses of \$322,229.21.

16. By this Supplemental Application, Houlihan Lokey seeks reimbursement for its expenses in the amount of \$450,897.95, which is comprised of legal fees of \$432,053.75 and related costs in the amount of \$18,844.20 that were incurred by Paul Hastings in prosecuting the Final Fee Application.

#### **AUTHORITY FOR REQUESTED RELIEF**

17. The majority of courts that have addressed the issue have held that a professional can recover its legal fees incurred in prosecuting a fee application. Section 330 of the Bankruptcy Code provides that "[a]ny compensation awarded for the *preparation* of a fee application shall be based on the level and skill reasonably required to prepare the application." 11 U.S.C. § 330(a)(6) (emphasis added). While section 330 seemingly addresses only the question of whether costs associated with *preparing* a fee application are compensable, courts repeatedly have ruled that costs arising from *prosecuting* fee applications similarly are recoverable under section 330.<sup>1</sup>

18. The majority rule that fees arising from the litigation of a fee application should be compensable was fashioned by the Ninth Circuit Court of Appeals in a line of cases beginning with *In re Nucorp*, 764 F.2d 655 (9th Cir. 1985). In *Nucorp* the Ninth Circuit relied upon the

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<sup>1</sup> In fact, professionals in this case sought, and were awarded, fees incurred in preparing their fee applications. For example, Bingham McCutchen LLP, counsel for the RCM Plan Administrator, sought in its final fee application \$295,149.50 in fees for time spend preparing its fee applications. [Docket No. 4476.] Similarly, Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Debtors, sought in its final fee application \$697,198.00 in fees under the category "Retention/Fee Matters (SASM&F)". [Docket No. 4484, Ex. A.]



general spirit of section 330 in holding that fees associated with both preparation *and* litigation of a fee application were compensable. 764 F.2d at 658-59, 661-62. The court reasoned that since attorneys are under a statutory obligation to submit to the bankruptcy court a detailed accounting of services rendered, requiring counsel to absorb the costs it incurred in preparing its fee application would “ignore the direct mandate of section 330(a) that reasonable compensation be provided for all ‘actual, necessary’ services rendered by bankruptcy counsel.” *Id.* at 659 (remarking that this approach is consistent with that of the Fifth Circuit). Thus, the court concluded, because a professional shall receive reasonable compensation for “all ‘actual, necessary services’ rendered in connection with the preparation and presentation of the fee application,” the professional should be reimbursed for legal fees incurred litigating a fee application *Id.* at 663.

19. In a later case, *In re Smith*, 317 F.3d 918 (9th Cir. 2002), *abrogated on other grounds by Lamie v. United States Tr.*, 540 U.S. 526, 531-39 (2004), the Ninth Circuit clarified the rationale for the rule it adopted in *Nucorp*. In *Smith*, the court again specified that it was relying not upon section 330(a)(6), which states that compensation may be awarded for *preparation* of a fee application, but upon the general tenor of section 330, in holding that costs associated with litigating fee applications were compensable. *Smith*, 317 F.3d at 928 (although section 330(a) does not mention “litigation in defense of fee applications ... [it] does not, however, forbid compensation for those services as long as they meet all of the requirements of the section.”). While the *Smith* court remarked that the Ninth Circuit had earlier rejected a “per se” award of litigation fees in these circumstances, it went on to hold that “to be compensated for the time and expenses spent litigating a fee application, the fee applicant must demonstrate that the services for which compensation is sought satisfy the requirements of section 330(a)(4)(A) *and* that its case exemplifies a ‘set of circumstances’ where the time and expense incurred by the litigation is ‘necessary’ within the meaning of section 330(a)(1).” *Id.* at 928; *see also In re Dimas, LLC*, 357 B.R. 563, 591 (Bankr. N.D. Cal. 2006); *In re On Tour, Inc.*, 276 B.R. 407, 418

(Bankr. D. Md. 2002) (referring to the 9th Circuit rule as the “majority position”); *In re Moss*, 320 B.R. 143,160 n.20 (Bankr. E.D. Mich. 2005) (same).

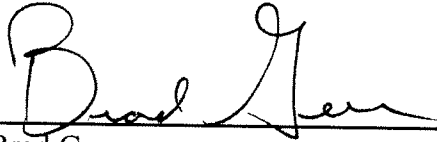
20. In *Smith* and in other cases, courts have found this two-prong test to be satisfied and have awarded fees for litigating a fee application. The *Smith* court held that the fee applicant’s services were necessary to the administration of the case because they aided the bankruptcy court in devising a plan for compensating all attorneys involved in the case, they provided a benefit to the debtor’s estate in determining the amount of the administrative fees owed to the applicant and they were not duplicative of services performed by other professionals in the case. *Smith*, 317 F.3d at 928-29 (also stating that meeting the test “should not be difficult in the present case – or perhaps in other similar cases.”). This reasoning has been followed by other courts. See *Dimas*, 357 B.R. at 591 (“Here, the fees incurred in connection with responding to the fee objections . . . are allowable. [They] are necessary to the administration of the estate because they assist the court and the chapter 11 debtor in fixing the amount of administrative claims against the estate.”); *Nucorp*, 764 F.2d at 658 (finding presentation of fee applications to be “actual and necessary services”); *In re Worldwide Direct Inc.*, 334 B.R. 108, 111-12 (Bankr. D. Del. 2005) (rejecting argument that services in litigating fee application were not undertaken for the benefit of the estate, and stating that “it has been emphatically determined by the numerous courts that have addressed the issue that reasonable compensation for professionals is a benefit to the estate”).

21. Finally, it makes no difference that Houlihan Lokey is seeking reimbursement for the fees incurred by another professional. In *Smith*, the court affirmed the fees awarded to the law firm Edwards & Hale (“E & H”) even though it was another law firm that incurred the fees defending E & H’s fee awards. 317 F.3d at 929 n. 7. The court held that the contrary argument “borders on the frivolous” because “[a]s long as the fee awards are reasonable compensation for services rendered that were necessary and which satisfy section 330(a)(4)(A), it does not matter whether they were rendered by E & H or by its agent.” *Id.*

22. WHEREFORE, Houlihan Lokey requests final allowance and approval of its expenses in the amount of \$450,897.95, which is comprised of legal fees of \$432,053.75 and related costs in the amount of \$18,844.20 that were incurred by Paul Hastings in the course of prosecuting and defending the Final Fee Application.

Dated: December 13, 2007

HOULIHAN LOKEY HOWARD & ZUKIN CAPITAL, INC.

By:   
Brad Geer  
Managing Director

**In re Refco Inc. et al**  
**Case No. 05-60006 (RDD)**

**SUMMARY SHEET OF EXHIBITS**

**Exhibit A**

**Certification of Brad Geer**

**EXHIBIT A  
TO FINAL FEE APPLICATION  
Brad Geer Certification**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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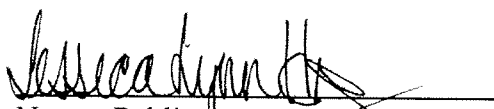
Chapter 11  
  
Case No. 05-60006 (RDD)  
  
(Jointly Administered)  
  
Honorable Robert D. Drain


**CERTIFICATION OF BRAD GEER**

BRAD GEER, under penalty of perjury, declares and says:

1. I am a Managing Director of the firm of Houlihan Lokey Howard & Zukin Capital, Inc., and I make this certification in support of the Supplemental Fee Application for Final Allowance of Reimbursement of Actual and Necessary Legal Fees and Expenses Incurred in Prosecuting its Amended Fourth Interim and Final Fee Application (the "Supplemental Application").
2. I have read the Supplemental Application.
3. To the best of my knowledge, information and belief formed after reasonable inquiry, the Supplemental Application complies with the applicable provisions of the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York Bankruptcy Cases and the United States Trustees' guidelines (collectively, the "Guidelines").
4. Except to the extent that fees or disbursements are prohibited by the Guidelines, I understand that the fees and disbursements sought are billed at rates in accordance with practices customarily employed by Paul Hastings Janofsky & Walker LLP ("Paul Hastings") and generally accepted by Paul Hastings' clients.
5. In providing a reimbursable service, I understand that Paul Hastings does not make a profit on that service, whether the service is performed by Paul Hastings in-house or through a third party.

Sworn to before me on this 13th day of  
December, 2007

  
Notary Public

By:   
Brad Geer  
Managing Director

