UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

SUMMARY OF FINAL APPLICATION OF MARC S. KIRSCHNER AS CHAPTER 11 TRUSTEE (THE "TRUSTEE") OF REFCO CAPITAL MARKETS, LTD ("RCM") FOR ALLOWANCE AND PAYMENT OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FROM APRIL 10, 2006 THROUGH FEBRUARY 10, 2007

Name of Applicant:	Marc S. Kirschner, Trustee
Authorized to Provide Professional Services to:	Estate of Refco Capital Markets Ltd.
Date of Appointment:	April 10, 2006
Period for Which Compensation and Reimbursement are Sought:	4/10/06 - 2/10/07
Amount of Compensation Sought as Actual, Reasonable, and Necessary:	$6,000,000.00
Amount of Reimbursement Sought as Actual, Reasonable, and Necessary:	$1,586.39
Amount of Interim Compensation Paid as Actual, Reasonable, and Necessary: (To be credited against award of final compensation)	$1,000,000.00
Amount of Reimbursement Paid as Actual, Reasonable, and Necessary:	$ -0-
Total Amount of Unpaid Compensation and Reimbursement:	$5,001,586.39

This is a Final Application

Summary of Expenses:

Expenses	**Value**
Meals	247.13
Transportation	1,339.26
Total Expenses	1,586.39

UNITED STATES BANKRUPTCY COURT
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Refco Inc., et al.,	:	(Jointly Administered)
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Debtors.	:	
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FINAL APPLICATION OF MARC S. KIRSCHNER AS CHAPTER 11 TRUSTEE OF REFCO CAPITAL MARKETS, LTD. FOR ALLOWANCE AND PAYMENT OF COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FROM APRIL 10, 2006 THROUGH FEBRUARY 10, 2007

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

Marc S. Kirschner, in his capacity as chapter 11 trustee (the "Trustee") for the estate of Refco Capital Markets, Ltd. ("RCM"), submits this final application (the "Fee Application") pursuant to sections 326 and 330 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 $6,000,000.00 (the "Fees") for professional services rendered as Trustee for RCM for the period April 10, 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 $1,586.39 (the "Expenses"). RCM's case has been jointly administered 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". The Refco

Debtors other than Refco LLC are referred to herein as the "Chapter 11 Debtors"). In support of his Fee Application, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Refco bankruptcy cases have since their inception been unusual, combining very large assets and debts, numerous issues of first impression, world wide impact because of the location of both creditors and estate assets, and a concerted effort by parties in interest with very different rights and legal positions to move the cases along promptly so as to achieve a timely and highly successful conclusion.

2. On March 14, 2006, this Court ruled preliminarily that RCM's case should have been converted to a stockbroker liquidation under Subchapter III of Chapter 7 of the Bankruptcy Code because RCM was a stockbroker with at least one customer. At the request of the parties, this Court deferred entry of an order implementing the preliminary ruling under the "unusual circumstances" authority of Section 1112(b) of the Bankruptcy Code. Instead, the Court directed the appointment of a chapter 11 trustee for RCM so that the parties might "pursue a potential global Chapter 11 Plan for RCM and one or more other Refco entities and...to do so ultimately with the purpose of reducing costs in augmenting the estate." Transcript of Hearing at 280, *In re Refco Inc.*, No. 05-60006 (RDD) (Bankr. S.D.N.Y. March 14, 2006) (hereinafter, "March 14 Tr."). The rationale was to set guidance as to this Court's view of key priority and certain other issues in the bankruptcy cases, and to provide "active, intelligent hands-on management" for RCM's portfolio of illiquid and exotic securities. *Id.*

3. This Court then set forth several distinct preferences for the appointment and conduct of the Trustee, which have guided his conduct throughout his engagement:

> I want to be very clear that the RCM Trustee should rely primarily on his or her own business and legal judgment. I would hope that

> the U.S. Trustee would appoint a lawyer or at least someone very familiar, if it is a business person, with the legal aspects of large Chapter 11 cases such as this with intercompany claims and similar issues. I'm not looking for this person to hire a large number of professionals to give him or her cover for his or her investigations and analysis. In fact, I don't believe that those types of people would end up being paid in this case if they were retained. The RCM trustee's job here is to come up to speed quickly to perform his or her due diligence primarily based on review of the processes and procedures that the debtors and the committee and other parties have already gone through, not to reinvent the wheel, to confer properly with all of the parties in the RCM case and to focus on the key issues pertaining to a plan.

Id.

4. The disputes that permeated these cases were not limited to intra-debtor differences of opinion. One of the largest disputes concerned the internecine warfare that was then raging among RCM's creditor groups, which made it difficult, if not impossible, for RCM to negotiate with the other estates and their creditors with a unified approach.

5. On May 2, 2006, this Court further clarified its preliminary conversion ruling by noting that "the dynamic or the process [for these cases would be] negotiation of an overall plan for all of the debtors or conversion [of the RCM case] to a stockbroker liquidation under chapter 7." Transcript of Hearing at 21, *In re Refco Inc.*, No. 05-60006 (RDD) (Bankr. S.D.N.Y. May 2, 2006) (hereinafter, "May 2 Tr."). The Court noted that "it would be next to impossible to negotiate a global deal if [there is not] some order or agreement at the RCM level," and that it would make sense to "see if the various customers of RCM can reach some sort of agreement on an approach to a plan." May 2 Tr. at 92, 95. This Court directed that the Trustee "confer properly with all parties in the RCM case and . . . focus on key issues pertaining to a plan." *Id.*

6. The Trustee superbly fits the criteria that the Court sought in an appointee to be selected by the United States Trustee. The Trustee had devoted over 30 years to

bankruptcy, creditors rights and reorganization matters and an additional five years as a senior managing director, general counsel, chair of the Pricing Committee and, for eighteen months, chief operating officer of a business that managed over $1 billion of distressed securities. In both legal and business capacities, the Trustee has played major roles in numerous bankruptcy "mega-cases", including as lead counsel to the Drexel Burnham Lambert Group world-wide bank committee. Because, as the Trustee has previously testified, *Drexel* contained some similarities to the RCM case, that case gave the Trustee valuable experience for his role in the RCM case. The Trustee had also been active in numerous litigated substantive consolidation, fraudulent transfer and valuation disputes.

7. To achieve this Court's mandate, the Trustee expended 2,266.30 hours from the date of his appointment through the effective date of the Global Plan (as hereinafter defined) of the Chapter 11 Cases.[1] He devoted an average of 266 hours per month in pursuit of a fair and negotiated resolution. With the help of his counsel, the Trustee wrought harmony of the cacophony at RCM, orchestrating the RCM Settlement Agreement (as hereinafter defined) that was the overture to the Global Plan. He converted what had been a battle zone into a cohesive force in these cases. The term sheet for the RCM settlement that was read into the court record on May 16, 2006 was reached 36 days after the Trustee's appointment, and the formal RCM settlement agreement was filed on June 29, 2006, 80 days after the Trustee's appointment.[2]

8. The RCM settlement removed the most significant roadblock to the global resolution of these cases and enabled the Trustee to marshal the largest creditor force to support a

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[1] *See Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 3948 (Bankr. S.D.N.Y. Dec. 14, 2006) (the "Global Plan").

[2] *See Order Approving Settlement Agreement Among Refco Capital Markets, Ltd. and Certain Securities Customers and Creditors, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2863 (Bankr. S.D.N.Y. Sept. 15, 2006).

prompt global resolution. The RCM Trustee and parties in interest negotiated the principal economic terms of the Global Plan, which was confirmed on December 15, 2006, and became effective December 26, 2006, a mere 8 1/2 months after the Trustee's appointment.[3] It is noteworthy that this timetable was first set forth as targeted milestones in the May 16, 2006 term sheet crafted by the Trustee for a settlement between the largest RCM securities and foreign exchange creditors. The milestones were aggressive, but the Trustee believed they were achievable. Once they were adopted, he drove the other parties relentlessly to meet them, and he succeeded.[4]

9. Commencing on December 27, 2006, 261 days after his appointment, and over the next several days, the Trustee distributed $1,486,270,000 to RCM's securities customers and general unsecured creditors. This represented a 52.81% recovery on allowed claims of securities customers and, as discussed in a moment, an 18.25% recovery to allowed or partially allowed portions of claims of general unsecured creditors. So far as the Trustee is aware, this may be the largest interim distribution ever made by a chapter 11 trustee. The Trustee and his counsel devised a complex motion to resolve or partially allow claims, fix reserves and authorize distributions that directly lead to this result.[5] For several reasons, the work underlying the claims

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[3] *See Findings of Fact Conclusions of Law, and Order Confirming the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 3971 (Bankr. S.D.N.Y. Dec. 15, 2006)

[4] It must be said that success could not have been achieved on this timetable without the extraordinary industry and diligence of the Court and Court staff in hearing and resolving motions and contested matters, and once the economic terms of the global settlement were reached, the able and diligent assistance of all other participants involved at that stage, all working together for the common goal of the Plan going effective by year end.

[5] *See Order Granting RCM Trustee's Motion For Entry Of An Order (1) Allowing Certain Claims, Partially Allowing Certain Claims, Disallowing Certain Claims, And Classifying Certain Claims, (2) Authorizing And Directing The Netting Of Certain Claims, (3) Specifying The Estimated Amount Of Certain Disputed Claims For Purposes Of Disputed Claims Reserves, (4) Authorizing And Directing The Creation And Funding Of Disputed Claims Reserves, And (5) Authorizing And Directing First Interim Distribution In Respect Of Scheduled/Allowed*

motion was more difficult than in most large cases. In light of the circumstances leading to the filings, the debtors had sensibly scheduled every claim as contingent, unliquidated or disputed. Moreover, given the exotic and illiquid nature of many of the securities at issue, many claims of securities customers raised thorny valuation issues. To prepare for and prosecute the claims motion, the Trustee and his professionals re-evaluated every security that was held by RCM on the effective date of the Global Plan. The Trustee negotiated resolutions favorable to RCM of many of the disputed claims to avoid or minimize claims' litigation.

10. The global settlement compromises complex and convoluted intercompany claims in a fair and equitable manner and will generate at a minimum an additional $430 million of cash for the RCM estate, plus 50% of the 35% equity interest of Refco Group Limited ("RGL") in Forex Capital Markets ("FXCM").

11. The Trustee's creative, hands-on approach was not limited to the settlement and Global Plan: it was brought to bear with huge success on RCM's portfolio itself. At the date of the Trustee's appointment, RCM held over $1 billion of debt and equity securities of over 1,200 issuers located throughout the world. As noted above, many of the securities were illiquid and exotic. Many were in workouts and restructuring proceedings in different jurisdictions throughout the world, and several were in closely-held corporations.

12. The Trustee first interviewed a number of well-known and well-regarded money management firms with a view to placing the entire portfolio with an experienced independent manager. Proposed fee structures for this work ran from 1 to 1 1/2% of the value of the portfolio ($10 million to $15 million in fees), and, more importantly, none of the firms had

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Claims, In Each Case, Pursuant To The Joint Chapter 11 Plan Of Refco Inc. And Certain Of Its Direct And Indirect Subsidiaries, In re Refco Inc., No. 05-60006 (RDD), Doc. No. 4080 (Bankr. S.D.N.Y. Dec. 22, 2006).

expertise in all aspects of the RCM portfolio. The firms also were insufficiently experienced with liquidation of securities on a fixed timetable to give the Trustee comfort that the securities would be liquidated on the schedule that the Trustee was to pursue under the RCM Settlement Agreement. The Trustee therefore consulted with key constituents and later formed the Portfolio Management Advisory Committee ("PMAC"), composed of sophisticated RCM securities customers, to assist the Trustee in maximizing the liquidation value of the RCM portfolio.

13. Working under the guidance of the PMAC, the Trustee then created, and under two separate Court orders obtained approval for, a method to liquidate debt and equity securities having a current market value of under $200,000, mainly to reduce the number of positions and minimize the huge management burden of dealing with some 600 issuers of securities of relatively small value. The Trustee also gained approval for the opportunistic liquidation of liquid securities up to a $35 million individual cap and $150 million aggregate cap. This later provision was subject to extensive notice and other protective provisions.[6]

14. In early October, when confirmation at December 15, 2006, appeared to be achievable, the Trustee took a further step, equally bold and creative, toward liquidation of as many of the remaining positions as possible, consistent with good market practice, in order to create the largest interim distribution possible by year end -- a goal strongly desired by all RCM constituents around the world. Under guidance from the PMAC, the Trustee retained VR Advisory Services ("VR") to assist in the execution of sales of the largest securities in the RCM

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[6] *See Order (A) Granting Relief From The Seventh Amended And Restated Stipulation And Consent Order, (B) Establishing Procedures Under 11 U.S.C. § 363 and Fed. R. Bankr. P. 2002 and 6004 To Sell A Limited Amount Of Securities Consistent with Good Market Practice and (C) Authorizing The Trustee To Sell Certain Miscellaneous Equity Securities Having An Individual Value of $200,000 Or Less, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 1971 (Bankr. S.D.N.Y. May 26, 2006); *Amended and Restated Order (A) Granting Relief From the Seventh Amended and Restated Stipulation and Consent Order, and (B) Authorizing the Trustee to Sell Certain Miscellaneous Debt Securities Having an Individual Value of $200,00 or Less, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2646 (Bankr. S.D.N.Y. Aug. 10, 2006).

portfolio in a manner consistent with good market practices, and under close 24 hour a day supervision and control by the Trustee.[7]

15. VR is the largest single creditor in the Refco cases and its principal, Mr. Richard Deitz, has been an active member of the official committee of unsecured creditors appointed in the chapter 11 cases (the "Creditors Committee"), the RCM securities customers' group and the PMAC. VR had formerly owned over 120 individual RCM securities prior to RCM's bankruptcy and ultimately, with its affiliates, had an allowed claim of $788 million. VR is a leading money manager of emerging market debt, especially of emerging market debt in restructuring proceedings. Thus, VR had significant first-hand knowledge of many of the RCM positions, detailed knowledge of many others and the most significant incentive to maximize the value of the portfolio, as it would reap a large percentage of the proceeds.

16. To ensure there were no conflicts of interest, the process created by the Trustee eliminated virtually all discretion for VR. All execution was under the control of the Trustee, VR has been subject to stringent reporting guidelines, and VR could not and did not handle any securities or cash. The entire settlement process was and is being handled by RCM's internal staff under the supervision of the Trustee. The Trustee has worked tirelessly and, given Mr. Deitz's residence in Moscow, at brutal hours with the VR trading and back office staff on this sales effort since October 26, 2006, the date the VR sales order was approved.[8] All aspects of the sales effort were actively controlled by the Trustee, in consultation with the PMAC.

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[7] *See Second Amended Order (I) Authorizing Sales of Securities Free and Clear of Liens, Encumbrances, and Other Interests Pursuant to 11 U.S.C. § 363 and (II) Authorizing Advisory Services Agreement with VR Advisory Services, Ltd., in its Capacity as Member of the RCM Portfolio Management Advisory Committee to Assist Chapter 11 Trustee with Execution of Sales of Securities, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 3228 (Bankr. S.D.N.Y. Oct. 26, 2006) (the "Second Amended Sales order").

[8] On many mornings the Trustee's day began with a 6:30 or 7:00 a.m. telephone call with VR's principal, Richard Deitz.

17. The result has been a great success: $775 million of securities were liquidated by January 31, 2007, and liquidation of the remaining securities is ongoing.[9] On the whole, the proceeds from the sales of the portfolio substantially exceeded RCM's successive internal monthly custodian valuations, one of the criteria used by the Trustee in approving proposed sales under the VR agreement. VR's fee for this valuable service was a mere 1/10th of 1% of sales proceeds (10 to 15 times less than the quotes the Trustee received from the independent money managers the Trustee interviewed). The Trustee is not suggesting that Mr. Deitz was acting as an eleemosynary institution, but as the largest creditor of RCM, his interest in disposing of the less liquid securities was aligned with those of the other RCM creditors.

18. Finally, as directed by this Court, although the Trustee retained Bingham McCutchen LLP ("Bingham") as his general counsel and Capstone Advisory Group LLC in connection with review of the intercompany claims as allocated by AP Services, LLC, the Trustee utilized his judgment and legal training in reviewing all[10] material matters and relied on the work product of the sophisticated and experienced professionals that had been in place in the Refco cases prior to his appointment. Within days of his appointment, the Trustee retained Goldin Associates, LLC, AP Services, LLC ("Alix Partners"), Skadden, Arps, Slate, Meagher & Flom, LLP, Conyers Dill & Pearman and Omni Management Group, LLC, to perform for RCM the services they had previously been performing for other Refco debtors. The Trustee spent many hours analyzing detailed data regarding a complex web of intercompany claims prepared

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[9] JP Morgan Chase ("JPMC") was retained to assist the Trustee in the liquidation of securities with a value on RCM's books of less than $500,000, as well as specific larger positions VR wished to purchase itself, for which JPMC conducted competitive auctions. JPMC was responsible for a small portion of the amount sold as of December 29, 2006. The Trustee retained numerous highly regarded and well known broker dealers throughout the world to execute sales of securities in the RCM portfolio.

[10] The Trustee did not in any matter practice law himself. Rather, he used his experience to review with a sophisticated eye the work product of his and others' counsel.

by Alix Partners. The Trustee utilized a report generated by Alix Partners and Houlihan Lokey Howard & Zukin Capital, Inc. (financial adviser to the Creditors Committee) in connection with the central issue in settling the internecine RCM disputes -- the definition of "customer property" versus general property of the RCM estate. In addition to his prior substantial knowledge and experience in complex bankruptcy litigation matters, the Trustee reviewed case law provided to him by Kasowitz, Benson, Torres & Friedman, LLP, and analyzed much factual information obtained by Kasowitz in 2004 examinations in connection with an investigation of all issues related to the senior bank debt and related guarantees, the subordinated bond debt and related guarantees,[11] the leveraged buyout transactions, the Refco Inc. IPO, and the asserted secured claims of JP Morgan Chase.[12]

19. What has distinguished his service as remarkable, both in kind and degree, has been Mr. Kirschner's level of personal involvement. He was the first to arrive at the office and the last to leave. There was no corner of Refco's business or records that he did not personally explore. There was no part of its portfolio that he did not personally investigate, no motion, brief or pleading too mundane for his personal review, no agreement or schedule to an agreement that he did not ensure was correct. There was no hour of day or night when he was

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[11] Bingham McCutchen was conflicted insofar as litigation of the LBO issues related to the senior banks and bondholders were concerned, as well as with respect to secured claims asserted by JPMC. It would have been expensive and time-consuming to bring in conflicts counsel to deal with these matters, particularly since Kasowitz had already been charged with performing this analysis. Accordingly, the Committee agreed that Kasowitz could provide its factual analysis to the Trustee. Had the need thereafter arisen, the Trustee would have retained conflicts counsel to commence suit.

[12] The Trustee retained Capstone Advisors to assist with intercompany issues where the rare but inevitable conflicts arose with the other estates and to work on global plan issues involving the other estates. *See Final Order Authorizing the Retention and Appointment* nunc pro tunc *of Capstone Advisory Group, LLC as Special Financial Advisor to the Trustee of Refco Capital Markets, Ltd. with respect to Intercompany and Intercreditor Interests, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 2408 (Bankr. S.D.N.Y. July 17, 2006).

unavailable and there was no employee or professional too senior -- or too junior -- for his personal, and searching scrutiny.

20. In sum, by faithfully and diligently following the suggestions so carefully explained by this Court, the Trustee achieved in this case with the help of his own professionals at Bingham and the excellent work of the other major professional firms an extraordinary result in record time. The Trustee was the driving force in achieving this result, spearheading the RCM settlement as a building block to the Global Plan, negotiating the principal economic terms of the Global Plan and conducting multiple day-long meetings of all parties to fulfill the conditions to the Global Plan's effectiveness on a very aggressive timetable, permitting the Trustee to make a substantial interim distribution to RCM securities customers and general creditors through a confirmed and effective chapter 11 plan, all within 8 1/2 months from the time of his appointment.

BACKGROUND

A. Bankruptcy Cases of the Refco Debtors

21. 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.[13] 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).[14]

22. 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

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[13] 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.

[14] The Refco LLC Case is not being administered jointly and is Case No. 05-60134 (RDD).

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

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

24. 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. On or about October 11, 2005, Mr. Bennett was arrested and charged with various crimes.

25. 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's.

26. 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 could continue 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.

27. 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

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

29. 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 a motion to convert the RCM case to a case under subchapter III of chapter 7 of the Bankruptcy Code.[15] Several objections to the Conversion Motion were filed, including from the Creditors Committee and the other Refco Debtors and this Court held five days of hearings thereon.

30. On March 14, 2006, this Court ruled preliminarily that RCM is a stockbroker with at least one customer and thus that RCM's bankruptcy case could 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.

31. That same day, the Court directed that the United States Trustee appoint a chapter 11 trustee in the RCM case. An order to that effect was entered on March 22, 2006 (the "Trustee Appointment Order").[16]

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[15] *See Motion to Convert Refco Capital Markets, Ltd.'s Chapter 11 Proceeding To A Chapter 7 Stockbroker Liquidation Under Subchapter III* (the "Conversion Motion").

[16] *Order Authorizing Appointment of Chapter 11 Trustee for Estate of Refco Capital Markets, Ltd., Case No. 05-60018, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 1535 (Bankr. S.D.N.Y. Mar. 22, 2006)

32. On April 10, 2006, the United States 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. The Court approved this appointment by Order dated April 12, 2006.[17]

33. On June 30, 2006, the Trustee filed a motion for approval of the Settlement Agreement by and among the Trustee and various customers and creditors of RCM.[18] The Court approved the Settlement Agreement by orders dated September 15, 2006.[19]

34. On September 14, 2006, RCM and the other Refco Debtors in the Bankruptcy Cases filed the Global Plan and an accompanying disclosure statement.[20] The Global Plan incorporates by reference the terms and conditions of the Settlement Agreement.[21]

35. The Global Plan was confirmed on December 15, 2006 and became effective December 26, 2006 (the "Effective Date").[22]

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[17] *See Order Approving Appointment of Chapter 11 Trustee for Refco Capital Markets, Ltd., In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 1656 (Bankr. S.D.N.Y. Apr. 12, 2006); *Amendment to Order Approving Appointment of Chapter 11 Trustee for Refco Capital Markets, Ltd., In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 1689 (Bankr. S.D.N.Y. Apr. 19, 2006); *(Corrected) Amendment to Order Approving Appointment of Chapter 11 Trustee for Refco Capital Markets, Ltd., In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 1706 (Bankr. S.D.N.Y. Apr. 24, 2006).

[18] *Motion of Marc S. Kirschner as Chapter 11 Trustee of Refco Capital Markets, Ltd. For Approval of an Agreement Among Securities Customers and General Unsecured Creditors of Refco Capital Markets, Ltd., In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2333 (Bankr. S.D.N.Y. June 30, 2006)

[19] *Order Approving Settlement Agreement Among Refco Capital Markets, Ltd. and Certain Securities Customers and Creditors, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2863 (Bankr. S.D.N.Y. Sept. 15, 2006).

[20] *Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2848 (Bankr. S.D.N.Y. Sept. 14, 2006) and *Disclosure Statement with Respect to Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2849 (Bankr. S.D.N.Y. Sept. 14, 2006) as subsequently modified and confirmed by *Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 3948 (Bankr. S.D.N.Y. Dec. 14, 2006).

[21] *Notice of Filing of Plan Support Agreement, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2861 (Bankr. S.D.N.Y. Sept. 15, 2006)

36. Under the order confirming the Global Plan, the Trustee was appointed Plan Administrator for RCM to wind down its affairs under the Settlement Agreement and Global Plan. The Trustee was also appointed as Trustee of the Refco Litigation Trust and Private Actions Trust under the Global Plan.

JURISDICTION AND VENUE

37. 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.

SUMMARY OF SERVICES

38. On the date of his appointment, the United States Trustee advised the Trustee to maintain detailed time records. A copy of the Trustee's time records is annexed hereto as Exhibit A. From April 10, 2006 through December 26, 2006, the Trustee expended 2,266.30 hours on the RCM case as RCM Trustee, averaging over 266 hours per month for the first 8 1/2 months of the RCM case. From December 27, 2006 through February 10, 2007, the Trustee expended an additional 239.30 hours on this case as RCM Plan Administrator (as defined in the Global Plan and documents related thereto). In the aggregate during the period covered by this Fee Application, the Trustee expended 2,505.60 hours on the RCM case.

39. In addition to the major matters highlighted above, the following is a summary of the multitude of matters the Trustee worked on from the date of his appointment, on

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[22] *See Findings of Fact Conclusions of Law, and Order Confirming the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of its Direct and Indirect Subsidiaries, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 3971 (Bankr. S.D.N.Y. Dec. 15, 2006).

April 10, 2006 through the Effective Date of the Global Plan on December 26, 2006, and continuing through February 10, 2007[23]:

a. Case Administration:

(I) Due diligence and familiarization regarding the RCM and other Debtors' Chapter 11 Cases, including discussions and coordination with professionals retained in these Chapter 11 Cases; review of processes and procedures instituted in the Chapter 11 Cases; review and analysis of issues pertaining to a reorganization of the Chapter 11 Debtors; review of prior plan proposals; review of the cash management, budgeting and expense allocation processes; review of the prepetition debt and structure and related transactions; review and analysis of financial information related to RCM and the other Refco Debtors; and review of numerous lawsuits seeking to impose a constructive trust on certain assets of RCM, and the litigation regarding the motion to convert the RCM case to a case under chapter 7;

(II) In concert with his counsel, negotiating and implementing all retainer agreements with several professionals previously retained by the Chapter 11 Debtors to avoid whenever possible duplication of efforts by professionals in these Chapter 11 Cases;

(III) Monitoring and reviewing certain pleadings and issues raised in the Chapter 11 Cases that may affect the administration of the RCM estate;

(IV) Serving as a member of that certain Fee Committee appointed in these cases by order dated August 22, 2006,[24] dealing with fees and budgets submitted by professionals retained in these cases, and dealing with allocation of professional fees;

(V) Reviewing and understanding the complex intercompany claims

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[23] As discussed below, the Trustee has agreed that the $6 million fee, if awarded, would also compensate him for all professional services rendered in his capacity as Plan Administrator from the Effective Date through February 10, 2007, in effect having the compensation as Plan Administrator start February 11, 2007, and this Fee Application cover the period from April 10, 2006 through February 10, 2007. In the event the fee is not awarded, Mr. Kirschner, in his capacity as Plan Administrator, would reserve the right to seek compensation for his service as Plan Administrator through February 10, 2007.

[24] A fee committee (the "Fee Committee") was duly organized pursuant to the *Order Approving Motion for Order Under 11 U.S.C. § 331 Appointing Fee Committee and Approving Fee Protocol (Docket No. 2193), In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2482 (Bankr. S.D.N.Y. July 21, 2006). Members of the Fee Committee were appointed by supplemental order. *Supplemental Order Approving Motion for Order Under 11 U.S.C. § 331 Appointing Fee Committee and Approving Fee Committee Protocol, In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 2772 (Bankr. S.D.N.Y. Aug. 22, 2006).

and preparing, with the assistance of his counsel, proofs of claims on behalf of RCM in various of the Chapter 11 Cases as well as in the Refco LLC chapter 7 case in amounts exceeding $2 billion;

(VI) Reviewing and analyzing potential claims against the senior and subordinated lenders to the Refco Debtors other than RCM, other claims arising out of the leverage recapitalization in 2004 and all issues related thereto and the IPO in August, 2005 and all issues related thereto ;

(VII) With the assistance of his counsel, reviewing and analyzing asserted secured claims of JPMC for over $101 million plus post-petition and default interest against RCM[25];

(VIII) Negotiating a favorable settlement of the asserted secured JPMC claims (which resulted in a net savings to the RCM estate of about $5.6 million and included a general ongoing role of JPMC in the valuation and custody of RCM's assets)[26] ;

(IX) Analysis, review and management, in conjunction with the PMAC,[27] of whether and when to dispose of certain of RCM's assets or investments in the RCM portfolio in order to maximize the value of the RCM estate for the RCM creditors;

(X) Negotiation of protocol to deal with joint provisional liquidators appointed in the Bermuda insolvency proceeding for RCM and related issues regarding fees asserted by the liquidators; and

(XI) Supervising all RCM cash receipts, investments, budgeting, expense allocations and disbursements.

b. Reorganization:

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[25] With respect to potential claims against the senior secured lenders and JPMC, the Trustee relied upon the analysis provided by Kasowitz Benson, counsel to the Additional Committee of Unsecured Creditors, not advice from his general or special counsel.

[26] *See Order Approving Settlement Agreement Between Refco Capital Markets, Ltd. and JPMorgan Chase Bank, N.A., In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 3807 (Bankr. S.D.N.Y. Dec. 12, 2006).

[27] The RCM Securities Advisory Committee (the "Advisory Committee") was duly organized pursuant to the *Order (A) Granting Relief from the Seventh Amended and Restated Stipulation and Consent Oder, (B) Establishing Procedures Under 11 U.S.C. § 363 and Fed. R. Bankr. P. 2002 and 6004 to Sell a Limited Amount of Securities Consistent with Good Market Practice and (C) Authorizing the Trustee to Sell Certain Miscellaneous Equity Securities Having an Individual value of $200,000 or Less, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 1971 (Bankr. S.D.N.Y. May 26, 2006). Members of the Advisory Committee were appointed pursuant to *Notice of Formation of RCM Securities Advisory Committee, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 2186 (Bankr. S.D.N.Y. June 16, 2006), as amended by *Notice Regarding Membership of RCM Securities and Advisory Committee, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 2781 (Bankr. S.D.N.Y. Sept. 5, 2006).

(I) Together with his counsel, negotiation, coordination, documentation and prosecution of a comprehensive resolution and settlement of issues among various RCM creditors embodied in the Settlement Agreement dated June 29, 2006 and Rogers Fund Joinder dated July 20, 2006 (collectively, together with subsequent amendments thereto, the "RCM Settlement Agreement"), as a building block for a global resolution of the Chapter 11 Cases, including analysis and consideration of various proposals and methodologies, review and analysis of substantial contribution claims of certain creditors, review and analysis of documents in support of certain creditors' claims, analysis of potential preference claims, preparation for trial and rendering deposition testimony and testimony at the hearing on the motion under Bankruptcy Rule 9019 to approve the RCM Settlement Agreement;

(II) With the assistance of his counsel, negotiation, coordination and documentation of a comprehensive global resolution and settlement of issues and a proposed structure for a plan of reorganization for all the Chapter 11 Cases (the "Global Settlement"), for which the RCM Trustee is a co-proponent, and related matters, including analysis and consideration of various proposals and methodologies to resolve these Chapter 11 Cases on a global basis;

(III) Aided by his counsel, analysis and negotiation of resolutions of numerous claims by and against certain non-debtor affiliates of Refco, Inc., including, without limitation, negotiating a consensual resolution of disputed intercompany claims and set off issues between RCM and Refco Securities Limited ("RSL") in connection with the settlement of claims against RSL by Sperbank and Refco Capital LLC[28] . The Trustee proposed the ultimately-agreed-on consensual resolution of the set-off dispute, which avoided litigation over RSL's claim to set off $45.9 million of funds due to RCM against RSL's claim against RCM for $138.1 million, and permitted a payment of $127 million from RSL to Refco Capital, Inc. This consensual resolution preserved $45.9 for use in the global settlement of intercompany claims, which included satisfaction of an $8 million loan due from RCM to RSL (which was overcollateralized by RCM securities), and the satisfaction of the remaining RSL claims against RCM;

(IV) Participation with his counsel in drafting the Global Plan and accompanying disclosure statement, numerous amendments to the Global Plan and taking all steps necessary in connection with confirmation,

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[28] *See Revised Stipulation and Order Concerning Collection of Intercompany Claims Against Refco Securities LLC, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 2643 (Bankr. S.D.N.Y. Aug. 10, 2006); *Stipulation and Agreed Order Between Refco Securities LLC, and Refco Capital Markets, Ltd. Regarding Setoff and Relief from the Automatic Stay, In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 3148 (Bankr. S.D.N.Y. Oct. 16, 2006).

effective date and post-effective date administration of the RCM estate under the Global Plan of reorganization and the RCM Settlement Agreements; and

(V) Serving as Chair of the FXCM Committee formed under the Global Plan; negotiating a sales and auction process with management of FXCM and dealing with litigation matters related to FXCM. As noted above, under the Global Plan, RCM will receive 50% of RGL's 35% equity interest in FXCM.

c. Litigation:

(I) Analysis, negotiation, settlement, documentation and seeking approval of settlements regarding various claims related litigations with certain creditors and third parties, including Rogers Fund, SPhinX Managed Fund, BAWAG P.S.K. Bank Für Arbeit Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, and Winchester;

(II) Working closely with his counsel in the commencement and prosecution of adversary proceedings against other Refco Debtors and certain creditors regarding RCM "Assets in Place" (as defined in the RCM Settlement Agreements);

(III) With the assistance of his counsel, responding to multiple subpoenas and other discovery requests;

(IV) Through his counsel, monitoring and assisting in defending an appeal of the order approving settlement with SPhinX Managed Fund, including analysis of and responding to related chapter 15 proceedings;

(V) Monitoring, analyzing and directing his counsel to object, when necessary, to requests for administrative expense priority claims; and

(VI) Prosecution by his counsel of the "quiet title" actions in connection with the RCM Settlement.

(VII) Analysis with his counsel of potential preference claims against third parties.

(VIII) Analysis with his counsel of actions against the other Refco Debtors and non-debtor affiliates and against numerous third parties to collect assets of RCM, and meetings with the Court-appointed Examiner and related follow-up with respect to the examination conducted by the Examiner related to third-party claims.

d. Claims Analysis:

(I) Analysis and review of, and, as needed, defense by his counsel

against, creditor proofs of claims and/or motions for allowance of claims and related issues for purposes of the claims administration process, including dealing with a class action against RSL and other Refco Debtors on behalf of a putative class of RCM securities customers;

(II) With the assistance of his counsel, analysis of prepetition transactions to determine whether there are avoidance or other claims or causes of action held by RCM or other Refco Debtors against creditors or third parties;

(III) Discussion with and direction of his counsel to prepare file and handle the omnibus motion to deal with claims objections, allowance, partial allowance, distributions and establishment of reserves; and

(IV) Direction of his counsel to prepare and successfully object to request for a fee enhancement of $7 million made by Houlihan Lokey, the financial adviser to the Creditors' Committee, and causing the request to be adjourned at the trial of the matter until it could be dealt with in connection with final fee applications of all professionals, and work by the Trustee in connection with that objection.

SUMMARY OF FINANCIAL RESULTS

40. The following is a summary of the increase in RCM's assets from November 18, 2005 (the date closest to the filing date of the Bankruptcy Cases for which RCM made a detailed calculation), to March 31, 2006 (the closest month end to the date of appointment of the Trustee) and then on the effective date of the Global Plan on December 26, 2006:

	11/18/05 Balance	3/31/06 Balance	12/26/06 Balance[29]
Cash	$ 276,639,404	$ 945,328,200	$2,039,992,953
Receivables	224,594,008	21,106,194	5,077,776
Securities	1,389,308,538	1,078,575,550	437,639,004
Misc/Other	9,720,000	9,720,000	21,776,000
Total:	$1,900,261,950	$2,054,729,944	$2,504,485,733

41. Changes from November 18, 2005 through the effective date were due to fluctuations in market value of securities, sales of securities, collection of receivables, maturities, redemptions, receipt of interest and dividends, receipts from other corporate actions and receipt in May 2006 from the settlement of the preference action against the SphinX entities in the amount of $263 million.[30]

42. From October 17, 2005 through December 26, 2006, RCM paid $17,285,135 in operating expenses and $62,830,573 in professional fees. RCM reserved an additional $15,931,427 (110% of estimated professional fess) for the payment of professional fees incurred through the Effective Date. The total assets at December 26, 2006 are in addition to these total expenditures.

43. A total of $9.69 billion of proofs of claim were filed against RCM. By the date of the first interim distribution pursuant to the omnibus claims motion, the Trustee examined and allowed $2,584,180,000 of securities customer claims and $666,060,000 of general claims; the balance of the filed claims were expunged or fully reserved for.

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[29] Immediately prior to distributions to RCM's securities customers, general creditors, JPMC and payments required under the Global Plan. The securities valuations are in accordance with valuations obtained from RCM's securities custodians from November 11, 2005 through December 26, 2006. The Trustee believes approximately $15 million of securities throughout that entire period may prove to have been worthless.

[30] Pending the outcome of an appeal of the SphinX settlement, $275 million of the cash is restricted.

44. On December 26, the Trustee paid $84,425,193 to JPMC to settle its secured claims against the RCM estate. On December 27, 2006 and over the next several days, the Trustee made an initial distribution of $1,364,710,000 on allowed securities customer claims (a 52.81% interim distribution) and $121,560,000 on general claims (an 18.25% interim distribution). In addition, RCM stands to receive a minimum of $430 million in the global settlements under the Global Plan, plus 50% of the net sales proceeds of RGL's 35% equity interest in FXCM. The Trustee estimates that RCM securities customers will ultimately receive approximately 85.6% of allowed claims and general unsecured RCM creditors will receive approximately 37.5% of allowed claims. In addition, RCM securities customers and general creditors will have the largest interest in any recoveries from litigations against third parties as a result of their beneficial interests in the RCM Litigation Trust and Private Actions Trust.

45. On October 17, 2006, the Trustee made a $115 million intercompany loan to provide additional funds to the other Refco debtors that were needed to pay the secured lenders under the Global Plan. This loan was fully secured and had priority against all other Refco debtors. The intercompany loan was repaid on December 19, 2006, yielding total interest to RCM of $1,136,310, representing 25 basis points more than RCM's average borrowing costs.

THE FEE REQUEST

46. While the Trustee firmly believes that under all applicable legal standards, a higher fee would be justified under the circumstances here, after arduous negotiation, the Trustee, with the assistance of his counsel, reached an agreement with the Additional Committee of Unsecured Creditors of Refco Inc., *et al.* to limit his final fee request to a fixed fee of $6 million covering the period from the date of the Trustees' appointment on April 10, 2006 through the Effective Date of the Global Plan. In addition, the Trustee agreed that his compensation as

Plan Administrator (or chapter 7 trustee) would commence on February 10, 2007, thus, this final award covers effectively, a ten month period. This covers the period through the Effective Date of the Global Plan as Chapter 11 Trustee for RCM, and the period of his service as Plan Administrator for RCM through February 10, 2007. The interim fee received of $1 million would be credited against this award.[31] In the event this arrangement were approved by the Court, the parties further agreed that commencing February 11, 2007, the Trustee may bill as Plan Administrator for the remaining windup of the RCM estate at $850 per hour. The Trustee as part of the agreement with the Additional Committee has the right to seek reimbursement of reasonable out-of-pocket expenses but not overhead for office space and secretarial assistance.[32]

47. The Trustee understands that the foregoing fixed-fee compromise reached with the Committee does not bind this Court, the United States Trustee or any party in interest. It does, however, establish a consensus view as to the amount that would fairly and appropriately compensate the Trustee for the work he did, reached between the Trustee and the representatives of the largest securities customers and general creditors of RCM, for whose benefit that work was done, and who ultimately bear the burden of the fee to be paid.

48. Finally, the Trustee has agreed with the Additional Committee that he has a right to seek a bonus of up to $500,000 if more than 90% of RCM's Assets in Place and cash or cash equivalents received in the intercompany settlement in at least the amount of $430 million,

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[31] *See Order Pursuant to §§ 326, 330 and 331Allowing Interim Compensation of Marc S. Kirschner as Chapter 11 Trustee of Refco Capital Markets, Ltd., In re Refco Inc.,* No. 05-60006 (RDD), Doc. No. 3407 (Bankr. S.D.N.Y. May 26, 2006).

[32] The Trustee rented office space from his general counsel, Bingham McCutchen from April 10, 2006 to date and reimburses Bingham McCutchen for administrative and secretarial services. Under this arrangement the Trustee has paid Bingham $40,166.30 from April 10, 2006 through January 31, 2007 and payment continues at the rate of $3,211.63 per month.

after costs and expenses, is distributed on or before June 30, 2007 (with rights of parties in interest to support or oppose a bonus request preserved).[33]

49. In view of the Trustee's lengthy and distinguished legal and business career, an hourly rate of $850 compares appropriately with the Trustee's peers in the bankruptcy and reorganization legal practice. It should be noted that the Trustee has been billed (and has paid for) $40,166.30 for office and secretarial space incurred during his service as RCM Trustee through January 31, 2007, and those amounts come within the overhead that will be covered by his fee award.

50. Using a lodestar amount is not the decisive factor for reimbursement of a statutory trustee. *See In re Frost*, 214 B.R. 295, 297 (Bankr. S.D.N.Y. 1997) (stating that § 326 sets forth the maximum compensation a trustee may receive, but the "actual compensation allowed is subject to the court's discretion"); *see In re Biskup, 236 B.R. 332, 337* (Bankr. W.D. Pa. 1999) (trustee compensation is not "strictly limited to a lodestar analysis"). Rather, the Trustee is entitled to a reasonable fee which is capped by statute at 3% of disbursements by the Trustee to parties in interest, or approximately $48.9 million, based merely on disbursements to date as described below. *See* 11 U.S.C. § 326. Nonetheless, the Trustee understands that the lodestar metric provides a window into a trustee's performance. Using the hourly rate, or lodestar, of $850, as the appropriate rate during the course of this case, from April 10, 2006 through February 10, 2007, the 2,505.60 hours worked by the Trustee in this case through February 10, 2007 times $850 an hour without a premium or enhancement of such hourly rate would equate to a fee of $2,129,760 ($850 times 2,505.60 hours). During this case, this

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[33] As part of such agreement, the Additional Committee designated the Trustee as Trustee for the RCM Litigation Trust and Private Actions Trust and negotiated a separate fee agreement with the Trustee for these additional post-Effective Date services.

assignment was the Trustee's full time occupation. Applying a premium of 2.82 times the lodestar would result in a $6 million fixed-fee based on hours worked ($6 million divided by $2,129,760). This 2.82 multiplier falls well within applicable case law, as described more fully below, as an appropriate premium over time charges, especially in view of the high quality of services and results obtained. In addition, the tangible benefit achieved in the global settlement will generate at least $430 million of cash or cash equivalents to RCM, and likely much more, plus RCM's 50% shares of the proceeds of the sale of RGL's 35% interest in FXCM.

51. To place the fee application in context, the statutory cap for trustee compensation, even if one applied the percentage cap of 3% of moneys disbursed only to the distributions made to date (approximately $62.8 million of professional fees, $84 million to settle with JPMC, and $1.486 billion of distributions to creditors for a total of $1,632,000,000), would yield a maximum fee of $48.9 million, and the estate still holds over $900 million of assets. Of course, the Trustee does not rely on the commission scale under Section 326 of the Bankruptcy Code as any reasonable basis to justify compensation in the RCM case. The commissions referred to in that section are only a cap, not a fixed fee, and in any event applying the percentages in such section in a case of this size would lead to an absurd result. Nevertheless, comparison to that calculation is useful to demonstrate the conservatism of the request here.

52. The intangible benefits of promptly orchestrating the RCM settlement, then the global settlement, the creative and very successful sales process and claims resolution and distribution process, as well as the prompt conclusion of all the Chapter 11 Cases are impossible to quantify. It is certain that the Trustee's diligence and leadership saved these estates -- meaning all the Refco Debtors, not only RCM -- time. That time, in turn, meant scores of millions in the time value of distributions, and tens, if not scores of millions, in saved

administrative cost. It is equally certain that the Trustee's approach to portfolio management has saved the estate further tens of millions in avoided portfolio management costs. Moreover, notwithstanding pre-appointment fears that a trustee would be forced to sell the portfolio at distressed prices, Mr. Kirschner achieved good values in the liquidation of securities. Given all these specific factors, the complexity and uniqueness of these cases, and the results obtained, a $6 million flat fee for the period April 10, 2006 through February 10, 2007 is fair and reasonable and within the statutory cap under § 326(a).[34]

53. The Trustee also seeks reimbursement of certain out-of-pocket expenses incurred from April 10, 2006 through February 10, 2007 as described below, and more particularly set out in Exhibit B hereto:

Taxis and local transportation	$714.78
Meals	$ 33.72
Airfare, transportation and meals for trip to Chicago in July, 2006 to meet with lawyers and business representatives of the Rogers Funds in connection with the RCM Settlement Agreement and Rogers Joinder.	$837.89
Total:	**$1,586.39**

[34] As noted above, the Trustee does not rely on the commission scale under Section 326 of the Bankruptcy Code as any basis to justify compensation in the RCM case. The commissions referred to in that section are only a cap, not a fixed fee. The total fee requested herein is well below the statutory cap under Section 326 of the Code.

STANDARDS FOR COMPENSATION OF A CHAPTER 11 TRUSTEE

C. General

54. A bankruptcy trustee is to receive "reasonable compensation" according to 11 U.S.C. § 330, subject to the maximum percentage ceiling set by § 326(a). In recent cases, the courts have awarded trustees generous compensation, based on results achieved and benefit to the estate. At the outset of this case, given the very significant intercompany disputes among the Refco Debtors, payment of compensation was uncertain as was the potential length of this case. When a Chapter 11 trustee is utilized and produces outstanding financial results for creditors, then it is essential that the trustee receive the realistic market value of his effort, with appropriate upward adjustments to account for risk factors in a fair and equitable manner, reflecting alternative uses of time. If a successful case for creditors does not lead to a reward for the Chapter 11 trustee that is significantly greater than in a case where no contingency risk or delay of payment is involved, talented trustees will be unwilling to serve, or to take such risks in the future. This would limit future recoveries by other creditors, particularly in the most difficult and complex cases where trustees with strong backgrounds are needed the most.

D. The Trustee's Unique Background

55. The Trustee's unique experience profile gave him a particularly appropriate background for these cases.

56. Mr. Kirschner is self-employed as a consultant in the bankruptcy and restructuring fields. He was an attorney in the private practice of law for over 30 years specializing in bankruptcy, creditors' rights and reorganization matters. From November, 1987 through January 2001, he was a partner in the New York office of the global law firm, Jones, Day, Reavis & Pogue, now called Jones Day. During that time, among other positions, he was the head of the Bankruptcy/Restructuring Group in the New York Office. During his career in

private legal practice, Mr. Kirschner had lead roles in many complex chapter 11 cases, representing creditors, debtors and trustees, including representing the creditors committee of Drexel Burnham Lambert Group; the creditors committees of Coleco Industries, Inc., Woodward & Lothrop Holdings, and TV Filme; the bondholders' committee of Resorts International, Inc.; and the trade creditors committee of Hillsborough Holdings Corp; the acquirer of Anchor Glass Container Corporation; the largest creditors in Physicians Resource Group, Inc., and ICO Global Communication (Holdings) Ltd.; and the debtors in the New York Daily News and Shea & Gould chapter 11 cases. Mr. Kirschner has substantial experience in such complex bankruptcy litigation matters as fraudulent transfer, substantive consolidation and valuation issues.

57. Mr. Kirschner retired from Jones Day to join Resurgence Asset Management, LLC ("Resurgence"), as Managing Director and General Counsel and served in these capacities from January 27, 2001 through January 17, 2006, when he resigned from Resurgence. From June 14, 2004, through January 17, 2006, he also served as Resurgence's Chief Operating Officer. Resurgence is an investment advisor registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended. Resurgence primarily invests on behalf of its clients in securities and claims of companies experiencing financial distress. At Resurgence Mr. Kirschner was actively involved in a number of mega Chapter 11 cases, which are a matter of public record, including, Washington Group International, Inc., Sterling Chemicals, Inc., PhyAmerica Physicians Group Inc., and SmarTalk TeleServices, Inc. (World Wide Direct). He was the unofficial Chair of the SmarTalk post reorganization Trust.

58. Mr. Kirschner is a member in good standing of the New York State Bar and admitted to practice before the federal courts in New York State. He earned an A.B. in

economics, with distinction, from Dartmouth College, 1964; and a J.D., cum laude, from University of Michigan Law School, 1967. Mr. Kirschner is a Fellow of the American College of Bankruptcy, and has lectured and written extensively in the bankruptcy and creditors rights fields.

E. <u>The Trustee is to receive reasonable compensation, subject to a percentage ceiling</u>

59. The statutory framework for compensation under title 11 of the U.S. Code is straightforward. It provides that the trustee is to receive reasonable compensation (determined pursuant to § 330) subject to the statutory ceiling set forth in § 326(a). *In re Frost*, 214 B.R. at 297. In particular, § 330(a)(1) provides:

> After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326 . . . , the court may award to a trustee . . .-
>
> A. reasonable compensation for actual, necessary services rendered by the trustee . . . ; and
>
> B. reimbursement for actual, necessary expenses."

Section 330(a)(3) helpfully explains the meaning of "reasonable compensation":

> In determining the amount of reasonable compensation to be awarded . . ., the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

60. Thus, in determining reasonable compensation, the court must consider **"the nature, the extent, and the value of such services."** *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 24 (Bankr. S.D.N.Y. 1991) (emphasis added). The leading treatise restates § 330 as requiring the court to consider "the results obtained, time expended by the trustee, return to the estate, intricacies of the problems involved, and opposition involved." 3 COLLIER ON BANKRUPTCY ¶ 330.03[1] (15th ed. rev. 2005); *see also In re Frost*, 214 B.R. at 297. The statute's words dictate that the inquiry will take the court into three main factors: (1) the nature of the work done, including the undesirability of the work, the risks involved, and the delay in payment; (2) the extent of the effort expended (and hence the heavy emphasis on time necessarily worked under a suitable hourly rate, considerations to which § 330(a)(3)(A)-(F) expressly points the court); and (3) the value of services rendered, as indicated by the quality of results achieved for the estate.

61. As to the **nature** of the work, the Court may consider a variety of circumstances. Many of these appear in judicial opinions as the so-called *Johnson* factors. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974); *see also In the Matter of Nine Assocs., Inc.*, 76 B.R. 943, 945 (S.D.N.Y. 1987) (applying *Johnson* factors to determine allowance and reasonableness of fee awards in a bankruptcy case). Three of these circumstances are prominent here: (1) the novelty and difficulty of the issues and questions presented in the case; (2) the skill requisite to perform the required services properly and successfully; and (3) the magnitude of the estate and the remarkable results obtained. Where any

of the *Johnson* factors is present, then "reasonable compensation" calls for fee augmentation. *See Betancourt v. Giuliani*, 325 F. Supp. 2d 330, 332 (S.D.N.Y. 2004) ("The [court] may adjust the [lodestar] based upon a number of [*Johnson*] factors, the 'most critical' of which 'is the degree of success obtained.'") (citation omitted); *see also In re Southeast Banking Corp.*, 314 B.R. 250, 269 (Bankr. S.D. Fla. 2004) ("The Court may also consider the factors enumerated in [*Johnson*] and increase fees for 'excellent or exceptional results.'") (citation omitted). The court can accomplish such augmentation by enhancement of the whole fee by a multiplier or, with mathematical equivalence, by increase of the otherwise applicable hourly rate—and by either approach, the court would augment in an amount exactly adequate to compensate the trustee for his exceptional efforts in an extremely complex and novel case, for the extraordinary results achieved in the case, and for having assumed the work on a purely contingent basis, as discussed more fully below.

62. As to the **extent** of effort, the court should consider the cost of comparable services in assessing the reasonableness of a trustee's fee and continue with the widely applied market-driven approach to compensation. *Connolly v. Harris Trust Co. of Cal. (In re Miniscribe Corp.)*, 309 F.3d 1234, 1242 (10th Cir. 2002) ("The 'cost of comparable services' factor plays an 'overarching role' in assessing the reasonableness of a trustee's fee, given the nature and extent of the services rendered.") (citation omitted); *see also In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 853 (3d Cir. 1994) (explaining "Congress' manifest intent to provide fully competitive income"); *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. at 22 ("[C]ongress intended that market forces set the rate."); *In re Bennett Funding Group, Inc.*, 213 B.R. 234, 250 (Bankr. N.D.N.Y. 1997) (stating that Congress's intended approach for compensating professionals under title 11 "relies on the 'market' of comparable . . . services to assist in determining the level

of compensation to be awarded, the purpose of which was to attract competent professionals to bankruptcy practice"); *cf. id.* at 246-47, 250-51 (appropriately stressing the abiding role of judicial oversight and discretion); *see also In re Penn-Dixie Indus. Inc.*, 18 B.R. 834, 838 (Bankr. S.D.N.Y. 1982) (rationale for § 330 is "to encourage successful administration of estates by attracting bankruptcy specialists of high quality"). The court should look to the market because the Bankruptcy Code clearly rejected the old "spirit of economy of administration" standard in favor of that sounder market-driven approach. *See* 3 COLLIER ON BANKRUPTCY at ¶ 330.04[3][b]; 1 NORTON BANKRUPTCY LAW AND PRACTICE § 26:4 (2d ed. 1994); *In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d at 849-51; *In re Penn-Dixie Indus. Inc.*, 18 B.R. at 838; *In re Bennett Funding Group, Inc.*, 213 B.R. at 250. Thus, the court should award the trustee a base amount equal to the hours worked times an appropriate hourly rate. *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. at 22. The hourly rate is set at the market rate at the time of the award, so as to offset the effects of inflation (as distinguished from the time value of money). *See id.*; *see also* William J. Lynk, *The Courts and the Plaintiffs' Bar: Awarding the Attorney's Fee in Class-Action Litigation*, 23 J. LEGAL STUD. 185, 199-200 (1994). Moreover, as the market-driven approach counsels, and as § 330 expressly dictates, that hourly rate must not be lower than that payable in comparable fields. *See* Annotation, *Computation of Cost of "Comparable Services" in Determining Reasonableness of Compensation of Trustees, Examiners, Professional Persons, and Attorneys Under 11 USC § 330(a)*, 69 A.L.R. FED. 644, 645 (1984); s*ee also Grant v. George Schumann Tire & Battery Co.*, 908 F.2d 874, 878-79 (11th Cir. 1990) (stating that Congress intended that there "be no distinction between fees set in bankruptcy cases and those set in non-bankruptcy cases."). The Trustee believes an $850 per hourly rate is comparable to -- indeed, in view of recent rate changes arguably a little less than --

senior bankruptcy lawyers in the New York City market place and to the hourly rate the Trustee would command if he were still in private practice heading a large firm's creditors rights and bankruptcy practice in New York City, as he did from 1987 through January 2001.

63. As to the **value** of services, and consistent with the **nature** of the work performed and the results obtained in the case, the court may consider enhancing a trustee's fee in cases of exceptional performance. *George Schumann, 908 F.2d at 880 ("*Lodestar rates may be enhanced based on risk of non-recovery, excellent or exceptional results, or delay in receipt of payment.)*"; In re Apex Oil Co.*, 960 F.2d 728, 732 (8th Cir. 1992) (providing for examiner's fee enhancement when "the quality of service[s] rendered and the results obtained were superior to what one reasonably should expect in light of the hourly rates charged and the number of hours expended"); *In re Penn-Dixie Indus.*, 18 B.R. at 839 (recognizing, as a separate factor in fixing attorneys' fee, "the result factor: the bottom line amount recovered for the estate and its creditors"); *In re Southeast Banking Corp.*, 314 B.R. at 269-70 (awarding chapter 7 trustee a fee enhancement for exceptional results achieved "largely attributable to [trustee's] experience [and] stewardship of the Estate during his tenure as trustee"). The motive behind such an enhancement is to create the proper incentive for the trustee to maximize the funds amassed. This incentive is critically important because otherwise the trustee would be inclined to put in lots of hours but not to be aggressive in getting the best price for the estate's assets and in otherwise maximizing the estate. *See* Kevin M. Clermont & John D. Currivan, *Improving on the Contingent Fee*, 63 CORNELL L. REV. 529, 569 (1978) ("Undervaluation results in a lack of direct economic incentive for the [professional] to work as diligently and efficiently as possible."). Creating the desirable incentive by an enhancement is a legitimate part of "reasonable compensation"

precisely because § 330 specifically points the court to consider the "value" of the services rendered. Indeed, § 330 puts no limit on how heavily the court can weigh the value factor.

64. This application represents the ultimate contingency. Mr. Kirschner took it on with no fee agreement at all. He was simply advised by the United States Trustee to maintain time records and that a fee would be established at the conclusion of the case. Throughout the case, he had nothing to secure compensation except the certainty that he would be required to perform. He did perform. This case, in short, presents the economic model of risk and reward in its purest sense. The fee sought well serves the economic efficiency of encouraging other professionals, in other cases, to take on this kind of risk, and to associate their recoveries to performing for the benefit of the estate.

65. This should be facilitated here through the statute's implication of a "lodestar" approach based on the extent of work as measured by necessary hours times market rate, but subject to an enhancement or reduction to adjust for any remaining *Johnson* factors implicit in the nature and value of services. *See* 3 COLLIER ON BANKRUPTCY at ¶ 330.04[3]; 1 NORTON BANKRUPTCY LAW AND PRACTICE at § 26:5; *In re Broady*, 92 B.R. 389, 392 (Bankr. W.D. Mo. 1988) (reducing attorneys' fee); *In re Gencor Indus., Inc.*, 286 B.R. 170, 179-80 (Bankr. M.D. Fla. 2002) (enhancing attorneys' fee); *In re Southern Indus. Banking Corp.*, 41 B.R. 606, 615 (Bankr. E.D. Tenn. 1984) (enhancing accountants' fee). As already explained, these factors would result in an increase in the hourly rate or by an enhancement via a multiplier (or by both, if the nature factor is treated by an increase in the hourly rate while the value factor is treated by an enhancement multiplier).

66. The twin policies of § 330 are to induce competent trustees to serve and to incent those appointed to serve well. The statute's policy of looking at comparable costs is

designed not to discourage people from bankruptcy practice, that is, not to make that practice a backwater. Also, by paying the trustee's true opportunity cost, the court gives the trustee the incentive to work an adequate number of hours. Second, the statute's other straightforward policy is to give the trustee an incentive to amass funds that will maximize the net size of the estate, in order to pay off expenses and secured claims and thus to pay as much as possible to the unsecured creditors. In fact, the statute shows considerable economic sophistication in choosing to compensate with one eye on the effort expended and the other on the results realized. An ideal fee would take both measures into account. As explained at length in Kevin M. Clermont & John D. Currivan, *Improving on the Contingent Fee*, a "combination of an hourly component with a [value enhancement] results in a better overall measure of the cost to the lawyer and the value to the client of the legal services rendered". 63 CORNELL L. REV. at 579. The court recognized in *In re Guyana Dev. Corp.*, 201 B.R. 462, 480 (Bankr. S.D. Tex. 1996) that "[b]y incorporating both percentage-based compensation and a reasonableness analysis, Congress creates an incentive to trustees to search for all assets to maximize distribution to creditors as well as promotes a rational relationship between the effort expended and results obtained."

67. While the statutory policies are clear, the Court's task in implementing them is not always an easy one. The Court has the duty to oversee the setting of a number of figures—rate, hours, multiplier—that are notoriously difficult to calculate. *See In re Bennett Funding Group, Inc.*, 213 B.R. at 244. Moreover, the court must determine the compensation retrospectively, when creditors have every incentive to minimize the payment to the trustee, as they have already reaped the benefits of the trustee's services in salvaging their own risky investments.

68. "It has often been suggested that in determining the 'reasonableness' of fees, the court acts as a substitute for market forces and must assure the estate receives . . . the benefit paid for." Cynthia A. Baker, *Fixing What's Broken: A Proposal for Reform of the Compensation System in Bankruptcy*, 5 J. BANKR. L. & PRAC. 435, 473 (1996).

THE COURTS HAVE AWARDED GENEROUS COMPENSATION TO BANKRUPCTY TRUSTEES

69. In the bankruptcy context, courts have generally compensated trustees according to an enhanced lodestar approach, one that is market-driven rather than ungenerous. *See* Deborah H. Devan & Ford Elsaesser, *Hey, We Don't Do This for Free! Compensation; the Lubricant That Keeps the Machine Working*, NABTalk, Summer 2002, at 43; *see also Miniscribe Corp.*, 309 F.3d at 1245 (affirming a lodestar multiplier of 2.57 for trustee's fees); *In re Southeast Banking Corp.*, 314 B.R. at 270 (finding fee enhancement to trustee appropriate). Some courts, however, reject that approach as inappropriate in light of the significant difference between the functions performed by trustees and those performed by the professionals employed by trustees. In these courts especially, the results obtained in the case play a far greater role in determining reasonable compensation for trustees than they do with respect to the compensation of professionals. *See, e.g., In re Marvel Entm't Group, Inc.,* 234 B.R. 21, 47 (D. Del. 1999) (awarding chapter 11 trustee only market rate for his services where evidence showed that the resolution of the case was attributable to the other professionals in the case). As noted in *In re Rauch*, 110 B.R. 467, 474 (Bankr. E.D. Cal. 1990) (citations omitted), "the Code itself demands favorable results, as trustees are only paid pursuant to a turnover of money. . . . Success is the test applied by the business world in measuring compensation. It is largely so in the courts." *See also* G.R. Warner, *American Bankruptcy Institute National Report on Professional Compensation in Bankruptcy Cases* 1991 AM. BANKR. INST. 205-06.

70. Courts have applied a generous premium to the lodestar in successful cases. In *Guyana Development,* the court applied at least a 5.5 multiplier and concluded: "The Court finds that the *Johnson* factors fully support an award of the maximum compensation to the trustee under 11 U.S.C. § 326. The trustee has amply rebutted any presumption that the lodestar fully reflects the novelty and complexity of the issues, the special skill and experience of the trustee, the quality of representation, and the results obtained in this rare and exceptional case." 201 B.R. at 485. Moreover, a fee enhancement of 2.8 times the lodestar amount for the Trustee is well within the range of multipliers commonly awarded in complex cases. Because the global settlement compromised potential litigation by RCM against all Refco debtors and generated an additional minimum recovery to RCM of $430 million, the Trustee believes that common fund or class action contingent fee cases are also a helpful analogy. *See, e.g., Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent),* 148 F.3d 283, 341 (3d Cir. 1998) (recognizing that "[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied") (citation omitted); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (stating that "multipliers of between 3 and 4.5 have become common" and awarding multiplier of 3.97) (internal citation omitted); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (awarding 6.5% of $3.05 billion settlement, representing lodestar multiplier of 3.5); *Karpus v. Borelli (In re Interpub. Sec. Litig.)*, 02 Civ. 6527, 2004 U.S. Dist. LEXIS 21429, *36-37 (S.D.N.Y. Oct. 26, 2004) (awarding multiplier of 3.96); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 and 374 (S.D.N.Y. 2002) (awarding 4.65 multiplier in securities fraud class action case); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 198 (finding multiplier of 5.5 appropriate in a discrimination class action and surveying cases where courts have awarded up to 6 times multipliers); *Weiss v.*

Mercedes-Benz of North Am., Inc., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (awarding a 15% fee of $11,250,000 to counsel in a product liability class action; stated in *In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 236 (S.D.N.Y. 2005) to represent a 9.3 multiplier); *In re Nortel Networks Corp. Secs. Litig.*, 01 Civ. 1855, Docket No. 194 (S.D.N.Y. Jan. 29, 2007) (awarding lead plaintiff's counsel in securities class action fees representing 3% of the settlement funds or $34 million, reflecting a 2.05 multiplier of the lodestar); *In re Bristol-Myers Squibb Secs. Litig.*, 361 F. Supp. 2d at 237 (awarding 4% of $300 million settlement representing lodestar multiplier of 2.29); *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288, 2004 WL 2591402, at *23 (S.D.N.Y. Nov. 12, 2004) (awarding 5.5% of $2.575 billion settlement representing lodestar multiplier of 2.46); *In re Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998) (finding a 2.5 multiplier fair under the lodestar test in a securities fraud class action case).

71. In *Miniscribe Corp.*, the Tenth Circuit affirmed an enhancement to the trustee fee of 2.57 times the lodestar rate based on application of the *Johnson* factors and on the exceptional results obtained in the case. 309 F.3d at 1243, 1245; s*ee also In re Covad Commc'ns Group, Inc.*, 292 B.R. 31 (D. Del. 2003) (awarding debtor's attorneys a $1 million enhancement in amount of their fee based on exemplary results obtained in a chapter 11 case involving $3 billion in claims); *In re Farah*, 141 B.R. 920, 929 (Bankr. W.D. Tex. 1992) (awarding a 2.0 multiplier to debtor's counsel for their extraordinary contribution to the success of the case); *In re Biskup*, 236 B.R. at 337 (awarding trustee fee that resulted in a 2.76 multiplier for his successful efforts in preserving the value of the estate).

72. In cases of exceptional results, a fee enhancement is warranted where there is specific evidence in the record to show that the quality of the work performed was superior to what would be reasonably expected. *George Schumann*, 908 F.2d at 880 (denying

fee enhancement for lack of evidence supporting extraordinary results); *see also Southeast Banking Corp.*, 314 B.R. at 269-271 (finding fee enhancement to trustee appropriate based on exceptional results achieved, including recoveries of over $350 million, success in disposition of claims, and payment in full of allowed claims). As discussed below, there is ample evidence in this case to support a fee enhancement of 2.82 times the lodestar for the Trustee, which is appropriate and reasonable compensation for the Trustee's exceptional efforts in this extremely complex and novel case, for the extraordinary results he achieved in the case, and for having assumed the work on a purely contingent basis.

THE TRUSTEE PERFORMED VALUABLE AND BENEFICIAL SERVICES TO THE RCM ESTATE

A. General

73. The 2,505.60 hours worked by the Trustee for the ten months ended February 10, 2007 provide an indication of the intensity of his effort. But the sheer number of hours amassed in so short a period of time only begin to tell the story. The Trustee cites four areas of special value and benefit generated for the RCM estate: (1) negotiating and implementing the RCM settlement agreement; (2) negotiating and implementing the global settlement with the other Refco debtors under the Global Plan; (3) the creation of the process through VR Advisory Services, with detailed supervision and control by the Trustee, to liquidate the more than $1 billion of RCM securities; and (4) the creative omnibus motion to resolve most of the claims against RCM, which enabled the Trustee to fulfill a key goal of the RCM securities customers and creditors -- to achieve a substantial interim distribution by the end of 2006.

B. The RCM Settlement

74. The RCM Settlement Agreement involved vigorous, arm's-length negotiations with the RCM securities customers and general unsecured creditors to resolve heated litigation and creditor disputes at the RCM level that might otherwise have resulted in a free-fall conversion of RCM's Chapter 11 case to a case under Subchapter III of Chapter 7, which in turn would have resulted in protracted and multi-faceted litigation with attendant spiraling costs and expenses, increased uncertainties and increased risks to the value of RCM assets available for distribution.

75. The RCM Settlement Agreement achieved three primary goals. It resolved a dispute regarding the allocation of assets of the RCM estate and established an agreed mechanism for allocating those assets among holders of securities customer claims, holders of FX/unsecured claims and the Leuthold Funds, whether as part of a global plan of reorganization for the other Chapter 11 Debtors or, if such a plan proved to be infeasible, as part of either a stand-alone plan applicable to RCM (to the extent permitted by the Court) or a Chapter 7 distribution process. Second, it deferred attempts to convert the RCM Chapter 11 case to a case under Chapter 7, and, if efforts to consummate the settlement in the RCM Chapter 11 case had failed, would have caused the parties to convert to Chapter 7 on a more-efficient, significantly pre-planned basis. Third, it implemented a request for a continued stay of costly and time-consuming estate property litigation and provided for dismissal of such litigation in the event that the settlement became fully effective.

76. The RCM Settlement Agreement was a positive result for all parties, as it effectively resolved expensive and time consuming litigation while setting the stage for the global resolution of the Refco Cases. Specifically, the filing of these cases in October of 2005 was met by a flood of estate property litigation relating primarily to RCM. In December 2005,

RCM became further burdened by The Conversion Motion – a result that would have risked harm to the distributable value of the RCM estate, delayed distribution of that value, increased litigation and expense over estate property issues and other matters, and, because of the complexity of the issues, likely generated an appeal of the ruling on the conversion motion no matter the outcome.

77. Reaching this point was a great challenge. In part this was due to the range of issues presented by those advocating for or disputing the identity of "customer property" or the applicable priority of "customers" in the conversion litigation. In part it was due to the practical importance of achieving near-unanimous support for a deal. In part it was due to the uncertainty that surrounded the SPhinX Settlement and that continues to surround the ultimate collection of third-party claims.

78. The objectors to conversion raised a host of issues. They argued that the putative securities customers were not "customers" within the meaning of section 741 of the Bankruptcy Code, contending that there was an absence of entrustment, as illustrated in part by alleged ambiguities in the standard customer agreement and in part by a "knew or should have known" standard with respect to RCM's potential inability -- both legally and financially -- to return their securities. *See Transcript of Hearing on Motions to Convert at 250, In re Refco Inc.*, No. 05-60006 (RDD) (Bankr. S.D.N.Y. Dec. 14, 2006) (hereinafter, "Conversion Tr."). Among other things, the form of confirmation slip contains a potential ambiguity with regard to RCM's right to dispose of the securities. *Id.* at 255. The Court resolved this ambiguity on the basis of the integration doctrine and the testimony of certain witnesses. The Court also concluded that information in financial statements did not raise enough of a red flag -- in law or in fact -- to change the nature of the relationship. The Court also distinguished analysis regarding section

101(53A)(b)(ii) in *In re SSIW Corp.*, 7 B.R. 735 (Bankr. S.D.N.Y. 1980) and had to address the presence -- unusual, in a broker/customer relationship -- of affiliate guarantees in the case of certain customers. *See Conversion Tr.* at 148. The Trustee acknowledged the force of the Court's analysis, but, as a prudent fiduciary, the Trustee had to recognize the risk that a reviewing court might have disagreed, and the certainty that the pendency of appeal would bring further delay and loss to the creditors of the RCM estate.

79. The core of the problem was a priority dispute: specifically who, upon conversion, would be entitled to claim priority under section 752(a) of the Bankruptcy Code, and in what property those creditors might claim priority. Implicated in the dispute were (i) legal questions raised in the conversion motion, (ii) legal issues and factual questions as to which creditors are entitled to treatment as "customers" under section 741(2) of the Bankruptcy Code, and (iii) legal issues and factual questions as to which property constitutes "customer property" under section 741(4). The RCM Settlement Agreement established a matrix for resolution of these questions.

80. The RCM Settlement Agreement established two primary sources of recovery: "Assets in Place" and "Additional Property" (each as defined in the RCM Settlement Agreement). Assets in Place were defined as all assets of RCM identified as of March 6, 2006 by Houlihan, Lokey, Howard and Zukin (as financial advisor to the Official Committee of Unsecured Creditors) and as supplemented by certain miscellaneous assets identified in a memorandum dated May 12, 2006. The Assets in Place also included the proceeds of the SPhinX Settlement, as well as proceeds of all of the forgoing. Additional Property consisted of all claims against all other Refco debtors and against third parties.

81. Attempting to predict which Assets in Place, if judicially tested, would be determined to be "customer property" and which creditors would be "securities customers" entitled to a priority upon conversion were the most significant issues facing the parties in their quest to reach mutually agreeable terms. The settling parties expressed wide ranging views as to both issues of fact and law while negotiating these points. An informed compromise was reached after extensive negotiation, all under the guidance and with strong input from the Trustee, and the compromise on these points became the central feature of the negotiated Agreement.

82. The agreed compromise essentially treated the Assets in Place as though the bulk of the assets constituted "customer property," as defined in section 741(4) of the Bankruptcy Code, while treating a smaller percentage of such assets as being available for distribution to holders of FX/unsecured claims in the event of a conversion. The RCM Settlement Agreement's provision for an initial distribution to holders of FX/unsecured claims of $221 million from Assets in Place was derived from (i) an absolute distribution of $97.4 million (a compromise based on the quantum that might be available to holders of FX/unsecured claims out of assets that do not constitute "customer property" under section 741(4)), and (ii) an advance from customer property in the RCM estate of approximately $123.6 million. That advance is to be repaid with 12% interest through the waterfall arrangements that govern subsequent distribution of proceeds of Additional Property, if and when received.

83. This advance was the linchpin of the settlement because it provided up front to the holders of FX/unsecured claims a portion of assets that the parties believed would likely be distributed to holders of securities customer claims in the event of a conversion to

Subchapter III of Chapter 7, with such advance to be returned, plus interest, out of contingent recoveries from Additional Property.

84. The RCM Settlement Agreement prudently allocated among RCM constituents risks that (i) certain property might not be deemed "customer property," (ii) certain customers might not be deemed to hold securities customers claims, (iii) holders of FX/unsecured Claims, with no certainty of any recovery, might initiate costly appeals and other litigation with respect to the conversion motion and related litigation, (iv) other settling parties might otherwise litigate disputes, and (v) the ultimate value realized from the securities that constitute the lion's share of the RCM estate would be diminished in a freefall Chapter 7.

85. An additional priority dispute resolved by the RCM Settlement Agreement arose from the claims of Leuthold Funds, Inc. and Leuthold Industrial Metals Fund, L.P. ("Leuthold"), which concerned, among other things, quantities of silver and palladium in possession of agents of RCM (the "Leuthold Metals Claims"). Leuthold has asserted replevin, return of property, constructive trust and other legal theories by which it claims an absolute ownership interest in the metals. The assets underlying the Leuthold Metals Claims were the only known assets in the RCM estate that were actual commodities, as opposed to financial assets and cash. After investigation, the Trustee believed the Leuthold Metals Claims were colorable, and that the risk to the RCM estate of loss in those proceedings, together with their cost and delay, justified, as part of the overall settlement, the treatment for the Leuthold Metals Claims, which, in essence, provided an option for Leuthold to receive its metals in-kind.

86. Finally, under a separate Joinder Agreement, the RCM Settlement Agreement resolved claims of the Rogers Funds, the second largest constituency in RCM case. Settlement with the Rogers Funds was set up by establishing a tight deadline to force the Rogers

Funds to agree to be treated as securities customers or risk treatment as general unsecured creditors.

87. Significantly, the RCM Settlement Agreement provided that the Trustee was required to seek to convert the RCM case to Chapter 7 if the Court did not approve the RCM Settlement Agreement by August 31, 2006, or the parties were not able to reach appropriate amendments to the RCM Settlement Agreement within a 10-day period after the Court advised the parties that it will not approve the RCM Settlement Agreement by August 31, 2006, or if certain milestones indicating progress toward implementing a plan of reorganization were not met, including the filing of a plan by August 31, 2006, the approval of a disclosure statement by October 15, the confirmation of a plan by November 15, and its effectiveness by December 31, 2006. While some of the interim milestones were extended by consent of the settling parties, the tight deadlines to achieve effectiveness by year end served as the guideline for all Refco constituents to drive towards that goal.

C. The Global Settlement

88. The RCM Settlement Agreement served as a stepping stone to the Global Plan. However, as directed by this Court, the Trustee virtually from the first day of his appointment began to analyze potential issues, structures and financial outcomes for a global plan among all Refco debtors. The Trustee realized that unless and until RCM's warring factions resolved their internecine disputes, having meaningful plan negotiations with the other debtors and creditors would be impractical. Therefore, the Trustee worked together with his general counsel, Bingham, tirelessly "behind the scenes" to construct a global plan.

89. The Trustee and his counsel met several times with lawyers for the debtors to explore the issues impacting a plan. The Trustee met constantly with representatives of Goldin Associates to analyze recovery values of assets of the other Refco debtors, and with

representatives of Alix Partners and Goldin Associates to analyze the complex web of intercompany accounts by and among RCM and all the other debtors. The Trustee and his counsel held several meetings with representatives of the senior bank group to explore legal and factual issues related to the senior secured debt and related guarantees. The Trustee worked with the Kasowitz Benson firm to examine legal and factual issues relating to the secured claim of JP Morgan Chase against RCM. The Trustee also reviewed and analyzed a 133 page report prepared by Kasowitz Benson concerning potential avoidance actions against the secured lenders and bondholders. And, the Trustee analyzed case law and factual information provided to him by Kasowitz Benson to assess claims by and against the secured lenders and subordinated bondholders and related guarantees against the other debtors.

90. The Trustee, after analysis conducted with his attorneys at Bingham, filed a master proof of claim against many of the other Refco Debtors for not less than $2.278 million and alleging contractual, avoidance, conversion of customer property, misrepresentation, fraud, and breach of fiduciary duty theories. All parties agreed RCM was the most significant creditor of the other Refco debtors and their affiliates.

91. As the RCM Settlement Agreement was moving toward its successful conclusion, the Trustee, working with his counsel at Bingham McCutchen, began to prepare basic elements of a plan of reorganization and settlement of RCM's substantial claims against the other Refco debtors. An outline of such plan concepts and structures was provided to counsel for the debtors and to Albert Togut, the Chapter 7 Trustee for Refco LLC, on July 18, 2006. This draft concept for a global plan and settlement was not shared with any other party in the Refco cases, but later formed the basic outline for the global settlement and plan ultimately negotiated with all parties.

92. Separately, the RCM Trustee began to urge a few of the larger RCM securities customers who were on the Creditors Committee to begin discussing a plan and plan structures with other business representatives. Without the assistance of any attorney for any of the parties, those business representatives advanced discussions in a major way and then began serious discussions with the bondholders at the business level. Ultimately, those largest RCM creditors asked the Trustee to participate in and spearhead the negotiations at this business level. The Trustee then negotiated the essential outlines of a plan directly with the bondholders and these larger creditors and brought the plan outline to all signatories to the RCM Settlement Agreement. Shortly thereafter, the Trustee sent to the debtors, Creditors Committee, bondholders and major RCM securities customers and FX and general creditors a detailed outline of what ultimately became the global settlement of claims by RCM against the other Refco debtors and the Global Plan.

93. This work culminated in the adoption of the Summary Terms Of Global Chapter 11 Plan for Refco Inc., et al. (the "Global Plan Term Sheet"). The Global Plan Term Sheet was incorporated in a plan support agreement (the "Plan Support Agreement"), dated September 14, 2006, that was executed and filed with this Court by the representatives of RCM, the other Refco Debtors, the Creditors Committee, and numerous significant creditors of RCM and the other Refco Debtors. The Trustee working with his counsel then worked on all aspects of the extensive negotiations and the completion of the Global Plan Term Sheet and Plan Support Agreement. This involved more than 30 law firms and more than 50 parties representing more than $2.3 billion of claims executing the Plan Support Agreement.

94. In negotiating the global settlement, the parties agreed that assets available for distribution to creditors from the other Refco debtors and their affiliates would be

approximately $554 million, after payment to the secured lenders of 100% of their $717.7 million of principal plus contract interest and agreed legal fees and expenses, and after payment to the subordinated bondholders of 83.4% of their $397.4 million of claims. In the global settlement, RCM is scheduled to receive a minimum of $430 million in its intercompany claims plus a 50% interest in RGL's 35% equity interest in FXCM, subject to minimum and maximum recoveries to ensure that the ultimate distributions do not deviate too substantially from the asset realization values assumed to be available from the other Refco Debtors. Coupled with distribution of RCM Assets in Place and the agreed return to RCM unsecured creditors under the RCM settlement, it is expected that RCM securities customers will receive an 85.6% return on allowed claims and the unsecured creditors will receive a 37.5% return on allowed claims. RCM securities customers and general creditors will also receive interests in the RCM Litigation Trust and Private Actions Trust.

D. The Sales of Securities

95. At the date of the Trustee's appointment, RCM held over $1 billion of securities, many of which were emerging market fixed income securities or securities in workouts and reorganizations in many jurisdictions throughout the world. Liquidation of the RCM estate assets had been in contemplation at least since the time of the RCM Trustee's appointment. Initially the RCM Trustee sought and obtained this Court's authority to dispose of limited portions of the securities portfolio held by the RCM estate, essentially to eliminate over 600 smaller positions and to provide flexibility to deal with sudden changes in market conditions. When confirmation and effectiveness by year end seemed realistically in prospect, the Trustee sought broad based authority to expand RCM's securities sales activities and sought

approval to utilize the services of VR to assist in the sales process to maximize the value of the RCM Portfolio.[35] This process involved substantial consultation and advice from the PMAC.

96. The Trustee had established the PMAC, comprised of knowledgeable RCM creditors who advised the Trustee in connection with his management of the RCM Portfolio with a view to maximizing its value. The Trustee filed with the Court notices identifying the members of the PMAC.

97. VR was one of the members of the PMAC. VR is an asset management firm with a broad range of experience in emerging markets and distressed securities. VR is registered as an investment advisor with the SEC and is in good standing under the Investment Advisors Act of 1940, as amended. VR's investment strategies encompass distressed securities in emerging and developed markets, high yield and exotic debt securities, equities, currencies and derivative securities. Geographically, VR has extensive investment experience in the markets of Asia (except for Japan), Russia and the former Soviet Union, Eastern Europe and Latin America. VR estimated that it had direct experience with securities representing over 90% of the larger securities positions in the RCM portfolio. Collectively, the VR Entities have filed claims against RCM totaling approximately $788 million related to net equity positions of accounts maintained at RCM. The RCM Trustee and PMAC, in considering their endorsement of the VR Agreement, considered both potential conflicts arising from this claim as well as the alignment of interests among VR and other RCM creditors in achieving the maximum possible recoveries from the liquidation of RCM securities holdings and concluded that the VR Agreement is in the best interests of RCM creditors.

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[35] *See* Second Amended Sales Order.

98. The Second Amended Sales Order severely limited VR's authority and discretion. VR was required to solicit and accept bids within narrow parameters, under the strict control of the Trustee. For debt securities, accepted bids were required to be within pre-approved written price ranges or were subject to real-time day or night approval by the Trustee. Equity securities bids were also subject to pre-approved sales price ranges.

99. The VR Agreement (as defined in the Second Amended Sales Order) also imposed certain restrictions on VR in order to address any potential conflict of interest. By the terms of the VR Agreement and the Second Amended Sales Order, for example, VR could not assist the Trustee with respect to any security that VR, or any affiliate wished to purchase. These were to be handled by the Trustee through emerging markets specialists at JPMC, with the assistance of Goldin Associates, and with the advice of the PMAC. In addition, the VR Agreement required VR only to accept bids ratably and at the same average prices in the event VR or an affiliate sought to sell, at approximately the same time, a security of the same issuer and class or series that RCM was seeking to sell. In lieu of any expense reimbursement or other compensation to VR for its services under the VR Agreement, the Trustee agreed to pay to VR, in accordance with the VR Agreement, a fee in the amount of 0.10% of the net sales proceeds (after commission) of any securities sold by the Trustee as a result of VR's assistance under the VR Agreement. As explained above, this fee was 90% less than the lowest fee quoted by prospective independent professional portfolio managers interviewed by the Trustee, and it represented an estimate of the out-of-pocket costs incurred by VR in connection with the use of its traders and facilities to assist the Trustee with the services described herein and in the VR Agreement. By this, the Trustee does not mean to imply that VR was acting altruistically.

Rather, as the largest creditor of RCM, VR's interests were aligned with RCM in so far as obtaining the highest value for the securities was concerned.

100. The sales each month by VR and JPMC were very successful as measured against RCM's internal monthly valuations for the prior month prepared by its various custodians, as noted in the chart below.[36] This was one of the key benchmarks utilized by the Trustee in authorizing specific sales, as noted in the following chart:

a)	Net sales proceeds 10/31-11/30/06	$449.2mm	
	Minus custodian values at 10/31/06	(424.9mm)	
	Excess proceeds over monthly valuation		24.3mm
b)	Net sales proceeds 12/1-12/31/06	$118.0mm	
	Minus custodian values at 11/30/06	(107.0mm)	
	Excess proceeds over monthly valuation		11.0mm
c)	Net sales proceeds 1/1/07-1/31/07	$83.5mm	
	Minus custodian values at 12/31/06	(78.9mm)	
	Excess proceeds over monthly valuation		4.6mm
Total Excess Proceeds over Prior Monthly Custodian Values			$39.9mm

101. As discussed above, the Trustee believed that this sales process accomplished the following business goals, each of which was critical to the RCM estate:

(a) Minimization of the allocation of RCM management and professional resources to RCM estate assets that are of minimal value;

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[36] Prior to the involvement of JPMC and VR under the Second Amended Sales Order, the Trustee sold securities under the original and First Amended Sales Orders from July 5, 2006 through October 30, 2006, achieving sales proceeds of $125 million, compared to the custodian values at June 30, 2006 of $108 million, an excess over the June 30 custodian values of $17.5 million.

(b) Maximization of the value of the RCM estate through securities sales at times and in amounts reasonably calculated, in consultation with the PMAC, to produce the greatest net present value; and

(c) Liquidation of the non-cash assets in the RCM estate in preparation for the year-end plan effective date and the commencement of cash distributions to securities customers and creditors as promptly thereafter as possible.

102. In short, the Trustee, with the advice of the PMAC, proposed and implemented sale procedures that ensured expeditious liquidation of the RCM Portfolio in accordance with good market practices and in a manner reasonably calculated not unduly to suppress the price of the securities. The sale procedures proposed for liquidation of the Securities afforded the Trustee the flexibility to effect trades rapidly in response to market conditions while maintaining significant control over the liquidation of the RCM Portfolio.

103. Moreover, the VR Agreement permitted the Trustee to obtain the benefit of VR's significant expertise and broad experience in liquidating the larger debt securities of non-U.S. issuers, issuers in U.S. workout or bankruptcy proceedings, and non-U.S. equity positions in the RCM Portfolio, using a uniform procedure applicable to all trades and without compromising the RCM Trustee's control or accountability.

E. The Omnibus Claims and Distribution Motion

104. Securities and general unsecured creditors of RCM were primarily hedge funds, investment management companies and other financial institutions located around the world. The Bankruptcy Cases came as a great shock to these creditors when they realized to their horror that huge amounts of securities, foreign currencies and cash they had placed with RCM were "captured" in the bankruptcy. Many of the securities customers and general creditors in a multitude of foreign countries had local tax and accounting concerns to deal with and the management companies' ability to trade securities for their customers basically had come to a halt because substantial sums were locked up in RCM. Thus, one of the primary goals for the

RCM securities and general creditors was to seek prompt distributions on claims as soon as realistically feasible.

105. Once effectiveness of the Global Plan before the end of 2006 in fact became a realistic possibility, the Trustee's goal was to return to creditors and securities customers the maximum amount of money in the shortest period of time.

106. However, there were allegations of fraud against certain of Refco's principals at the beginning of these cases, and questions had been raised about the integrity of RCM's customer account information and the value of securities in customer accounts, particularly as to hundreds of illiquid emerging market debt instruments. In addition, in the chaotic days leading to the Chapter 11 filings, recording of financial activity and transfers by RCM became irregular. Many transactions and trades were in progress at the filing date, and RCM's records sometimes inaccurately recorded the status of the securities holdings and cash. The foregoing problems resulted in RCM filing schedules before the Trustee's appointment with every single claim listed as contingent, disputed and unliquidated. Thus, the Trustee was unable to rely on the schedules to make distributions, and had to devise an alternative strategy to deal with this complex problem.

107. Against this backdrop of concern and uncertainty, the Trustee launched a comprehensive program whereby the Trustee and professionals at Alix Partners and his general counsel, Bingham, acting on his behalf, reviewed and analyzed information with respect to individual accounts and the securities within them, with the goal of resolving valuation and accounting questions so that distributions could be made to individual claimants as quickly and accurately as possible. The program the Trustee outlined involved many steps, each designed to resolve specific issues or concerns the Trustee had with respect to valuation and the proposed

treatment of claims. The Trustee undertook to determine, first, whether each claimant could properly be classified as a securities customer, an FX customer, or a different type of creditor. With respect to each RCM customer, this analysis involved a review of account agreements and records as well as analysis of trading and other activity within each account.

108. At the same time, the Trustee undertook a comprehensive reexamination of the valuation of securities within individual accounts, and the accuracy of RCM's stated cash balances (both positive and negative). The focus of these valuation efforts was on illiquid securities contained within securities customer accounts on the Petition Date. As to valuation, the Trustee complied with the prescriptions for the establishment of net equity claims set forth in Section 3(b) of the RCM Settlement Agreement.

109. Toward these goals, the Trustee initiated an inquiry directed to each of the material known or suspected RCM securities customers. The Trustee's agents provided information to each claimant, identifying the securities and the positions as reflected on RCM's books and records, and invited each claimant to set forth their views as to the valuations of securities in their account, provide backup data as contemplated by the RCM Settlement Agreement, and set forth any other information they believed would be useful. There was no requirement to respond, but this request elicited much valuable information. Each request was styled as a "Securities Customer Information Form." The Trustee specifically solicited information that would enable him not only to apply the provisions of Section 741 of the Bankruptcy Code and the relevant provisions of the RCM Settlement Agreement, but also reasonably and independently to identify customer accounts as to which there were continuing questions of valuation or other accounting issues.

110. The Trustee concluded that there were approximately 1,200 discrete securities in the securities customers' accounts. Together with his professionals, in addition to valuation information presented to him by many securities customers under the RCM Settlement Agreement, the Trustee sought other reliable sources of valuation for those securities. He obtained values from RCM's securities custodians and from widely available sources such as Bloomberg L.P. For less liquid securities, such as bonds issued by smaller emerging-markets issuers and issuers in workouts and other insolvency proceedings, the Trustee was compelled to seek alternative sources of value. Where there were indicia of reliability, the Trustee used information provided by customers in their submissions of Securities Customer Information Forms, which often took the form of information from brokers who dealt in that security.

111. The Trustee also requested that JPMC, a respected market participant in many of the markets where the illiquid securities were issued or traded, provide its estimate as of October 17, 2005 for valuation of the several hundred securities where information was not readily available to the Trustee. The Trustee also made formal and informal inquiries of industry professionals, including other customers of RCM. As the process of valuation continued, the Trustee used the obtained values to begin reconciling the claims of individual claimants, which involved (and continues to involve) an ongoing dialogue and exchange of information with claimants.

112. The process of evaluating, analyzing, reviewing and in some cases restating the value of securities positions in various claimants' accounts required intense efforts over many weeks on the part of the Trustee, on the part of his professionals, and on the part of other personnel at the Trustee's disposal. The work was begun in earnest in October 2006, the groundwork having been laid in the months before. The team included six former RCM

employees who were involved in RCM trading, trade settlement and trade accounting matters, all of whom were employed by the estate, fully-dedicated and partly-dedicated professionals from each of AlixPartners Partners LLP, Bingham, and support and information from Goldin Associates, L.L.C. The work over this period was virtually non-stop, days, nights, weekends.

113. The Trustee remained intensely and personally involved in all aspects of this project. He participated in or approved all material negotiations and resolutions of valuation disputes.

114. This work resulted in the preparation and filing of the Omnibus Motion for entry of an order allowing certain claims, disallowing certain claims, and classifying certain claims, (2) authorizing and directing the netting of certain claims, (3) specifying the estimated amount of certain disputed claims for purposes of disputed claims reserves, (4) authorizing and directing the establishment of disputed claims reserves, and (5) authorizing and directing a first interim distribution in respect of allowed claims, in each case, pursuant to the Joint Chapter 11 Plan of Refco Inc. and Certain of its Direct and Indirect Subsidiaries ("Distribution Motion")[37].

115. In the Distribution Motion, the Trustee addressed approximately 2,300 claims filed against the RCM estate. In general, in connection with the Distribution Motion, the RCM Trustee's action plan in respect of these claims was:

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[37] *See RCM Trustee's Motion for Entry of an Order Granting RCM Trustee's Motion For Entry Of An Order (1) Allowing Certain Claims, Partially Allowing Certain Claims, Disallowing Certain Claims, And Classifying Certain Claims, (2) Authorizing And Directing The Netting Of Certain Claims, (3) Specifying The Estimated Amount Of Certain Disputed Claims For Purposes Of Disputed Claims Reserves, (4) Authorizing And Directing The Creation And Funding Of Disputed Claims Reserves, And (5) Authorizing And Directing First Interim Distribution In Respect Of Scheduled/Allowed Claims, In Each Case, Pursuant To The Joint Chapter 11 Plan Of Refco Inc. And Certain Of Its Direct And Indirect Subsidiaries*, *In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 3471 (Bankr. S.D.N.Y. Nov. 17, 2006) and corresponding order of the Bankruptcy Court, *In re Refco Inc.*, No. 05-60006 (RDD), Doc. No. 4080 (Bankr. S.D.N.Y. Dec. 22, 2006).

(a) to agree to certain claims when a review of RCM's books and records and security valuation information (including any updates to such valuation information) indicated agreement;

(b) to object to the *classification* of claims that RCM's books and records classify differently than does the filed proof of claim;

(c) to object to the *amount* of claims that RCM's books and records and security valuation information carried in different amounts from that sought in a filed proof of claim;

(d) where the Trustee agreed that a claim should be allowed, but had been unable to resolve disputes as to its amount or character or both, rather than to withhold distribution on the claim in its entirety on account of the dispute, to authorize an initial distribution based on 75% of the amount and character of the claim as reflected in RCM's books and records, and to reserve for the classification sought by the claimant;

(e) to object completely to claims that were unsupported by RCM's books and records (proposing to reserve for these claims at zero);

(f) to defer consideration of certain claims as not being capable of speedy resolution, based on lack of available facts or other reasons (proposing to reserve for these claims at the rate applicable – securities customer, FX/unsecured, or in certain limited cases, secured);

(g) to invite objections and discussions with any and all creditors who wish to discuss their classification, amount, or proposed reserve level; and

(h) fix appropriate reserves in cash and discounted amount of the then remaining securities in the RCM portfolio.

116. Many claims were resolved between the date of the filing of the Distribution Motion; however 73 objections covering 187 claims were filed. Many were thereafter consensually resolved or were resolved by Court Order.

117. Unresolved issues were sufficiently narrowed so as to enable the Trustee to make the initial distribution that he proposed. This result was either because (a) creditors agreed with the Trustee's views of their claims, (b) creditors and the Trustee agreed on a portion of the asserted claims, so distribution may be made, with the difference between the agreed

portion and the asserted claim benefiting from a reserve, (c) creditors agreed that the Distribution Motion may proceed without the need for any reserve for their claim at this time, (d) creditors did not object to Trustee's proposed treatment of their claims, and they have thereby effectively agreed to it, or (e) a creditor's claim was asserted not against RCM, but against another Debtor entity.

118. The Trustee believes that the strategy to allow many claims based on the Trustee's preliminary analysis of valuation issues and then making distributions against 75% of that estimated sum was an extremely creative strategy that drove most of the settlements and timing of resolution of claims; it enabled the Trustee to maximize distributions even where final resolutions of complex valuation issues could not be completed until a later date, and created an environment to settle many claims without litigation.

119. The result was the $1,486,270,000 year end interim distribution and a continuing similar effort to resolve the balance of the claims that should lead to another substantial interim distribution by March 31, 2007. By contrast to the immensity of the RCM estate and the vast number of claims filed, the Trustee believes that relatively few valuation and claims disputes will actually need to go through a full trial on the merits, but where compromise cannot be fairly achieved, the Trustee believes he has demonstrated vigorous litigation tactics to ensure a fair and equitable result for all RCM constituents.

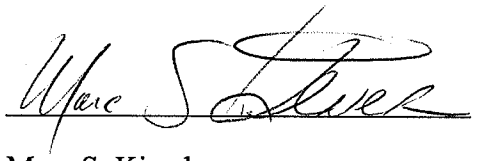
CONCLUSION

120. In reaching an agreement with the Creditors Committee on a fee that is substantially below what the Trustee would be eligible to seek, the Trustee has attempted, in keeping with the spirit in which he has participated in these cases, to forge a consensus on a fair and reasonable fee in a case as large and complex as this. The negotiated sum reflects the

benefits brought to the RCM estate and the risk of what the Trustee was able to accomplish, without any guarantees or promises of a particular fee. Though it is a number that is considerably less than the statutory cap and, most respectfully, a great deal less than the sum that the market would pay for the Trustee's accomplishments, the Trustee has voluntarily reduced the fee he is eligible to seek to accommodate the strong desire of the largest RCM creditors.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the proposed Fees and Expenses of the Trustee requested in the Fee Application and allow the prompt payment of these amounts.

Respectfully Submitted,



Marc S. Kirschner
Chapter 11 Trustee,
Refco Capital Markets, Ltd.
c/o Bingham McCutchen LLP
399 Park Avenue
Suite 2104
New York, NY 10022-4689
(212) 705-7442

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New York, New York