

Hearing Date: December 8, 2005, 10:00 a.m.
Objection Deadline: December 5, 2005, 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**MOTION FOR AUTHORIZATION TO RETAIN
AND COMPENSATE PROFESSIONALS
USED IN THE ORDINARY COURSE OF BUSINESS**

Refco Inc. ("Refco") and certain of its subsidiaries and affiliates
(collectively, the "Debtors"), debtors and debtors-in-possession in the above-captioned
cases, hereby submit this motion (the "Motion") for an order (the "Order") under sections
105(a), 327, 330 and 331 of title 11 of the United States Code (as amended, the
"Bankruptcy Code") authorizing the Debtors to retain and compensate professionals used
by the Debtors in the ordinary course of business.

Background

1. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on October 17, 2005 (the "Petition Date").
2. The Debtors have continued in possession of their property and are operating and managing their businesses as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108.
3. On October 28, 2005, the United States Trustee (the "U.S. Trustee") appointed an official committee of unsecured creditors in these cases (the "Creditors Committee"). No trustee or examiner has been appointed in these chapter 11 cases.
4. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper under 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

Relief Requested

5. The Debtors customarily retain the services of various attorneys and other professionals to represent them in matters arising in the ordinary course of their businesses, unrelated to these chapter 11 cases (the "Ordinary Course Professionals"). A list of the Debtors' Ordinary Course Professionals is attached as Exhibit A to this Motion.¹
6. By this Motion, the Debtors seek authorization (a) to retain the Ordinary Course Professionals as of the Petition Date under Bankruptcy Code sections 105(a) and 327, without the necessity of a separate, formal retention application approved

¹ As discussed more fully below, the Debtors reserve the right to amend such list in the future.

by this Court for each Ordinary Course Professional and (b) to pay the Ordinary Course Professionals under Bankruptcy Code sections 330 and 331 for postpetition services rendered and expenses incurred, subject to certain limits set forth below, without the necessity of additional Court approval.

7. In contrast, the Debtors have filed (or will file) individual retention applications for professionals that the Debtors seek to employ in connection with the conduct of these chapter 11 cases (the "Chapter 11 Professionals"). The Chapter 11 Professionals will be permitted to be compensated and reimbursed only in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court for the District of Delaware, the United States Trustee Fee Guidelines, and any orders entered in these cases governing professional compensation and reimbursement for services rendered and charges and disbursements incurred.

8. Although the Debtors believe that some of the Ordinary Course Professionals are not "professional persons" as contemplated by Bankruptcy Code section 327 and, thus, that no retention or payment authorization is necessary, out of an abundance of caution the Debtors seek an order authorizing the retention and payment of Ordinary Course Professionals in these cases.

9. Certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors. The Debtors do not believe, however, that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their estates, creditors or shareholders and, thus, the Debtors seek their continued retention in these cases.

Basis For Relief

10. The Debtors will continue to require the services of the Ordinary Course Professionals while operating as debtors-in-possession under the Bankruptcy Code to enable the Debtors to continue normal business activities that are essential to their stabilization and reorganization efforts. Moreover, the work of the Ordinary Course Professionals, albeit ordinary course, is directly related to preserving the value of the Debtors' estates. The amount of fees and expenses incurred by the Ordinary Course Professionals represent only a small fraction of that value.

11. It would hinder the administration of the Debtors' estates if the Debtors were required (a) to submit to the Court an application, declaration and proposed retention order for each Ordinary Course Professional; (b) to wait until such order is approved before such Ordinary Course Professional continues to render services; and (c) to withhold payment of the normal fees and expenses of the Ordinary Course Professionals until they comply with the compensation and reimbursement procedures applicable to Chapter 11 Professionals.

12. Under such conditions, there is a significant risk that some Ordinary Course Professionals would be unwilling to provide services, and that others would suspend services pending a specific Court order authorizing the services. Since many of the matters are active on a day-to-day basis, any delay or need to replace professionals could have significant adverse consequences. For example, if the expertise and background knowledge of the Ordinary Course Professionals with respect to the particular matters for which they were responsible prior to the Petition Date were lost, the estates undoubtedly would incur additional and unnecessary expenses because the Debtors would be forced to retain other professionals without such background and

expertise at potentially higher rates. It is, therefore, in the best interests of the Debtors' estates to avoid any disruption to the professional services required in the day-to-day operation of the Debtors' businesses.

13. In addition, requiring the Ordinary Course Professionals to file retention pleadings and participate in the payment approval process along with the Chapter 11 Professionals would unnecessarily burden the Clerk's Office, the Court and the U.S. Trustee, while adding significantly to the administrative costs of these cases without any corresponding benefit to the Debtors' estates.

Procedures

A. Proposed Retention Procedures

14. The Debtors propose that they be permitted to continue to employ and retain all Ordinary Course Professionals. However, each Ordinary Course Professional will be required to file, within twenty (20) days of the entry of the Order granting this Motion, a Declaration of Legal Ordinary Course Professional, substantially in the form of the declaration attached as Exhibit B to the Motion, or a Declaration of Non-Legal Ordinary Course Professional, substantially in the form of the declaration attached as Exhibit C to the Motion (Exhibit B and Exhibit C, together, the "Declaration"), as applicable, with this Court. The Ordinary Course Professional will file the Declaration with this Court and serve it on the Debtors, the U.S. Trustee, counsel for any trustee appointed in these cases, counsel for the Debtors, counsel for any official committee appointed in these cases and counsel for the Debtors' proposed postpetition secured lenders (the "DIP Lenders") (collectively, the "Interested Parties").

15. The Debtors further request that upon service of a Declaration, the Interested Parties have ten (10) days to object to the Ordinary Course Professional's

retention (the "Objection Deadline"). The objection will be served on the Interested Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If any such objection cannot be resolved and withdrawn within ten (10) days after receipt, the matter will be scheduled for a hearing before the Court on the next regularly-scheduled omnibus hearing or date otherwise agreeable to the involved parties. If no objection is received by the Objection Deadline, or if an objection is withdrawn, the Debtors will be authorized to retain the Ordinary Course Professional without further order of the Court, *nunc pro tunc* to the Petition Date.

16. The Debtors request that they be authorized to employ and retain additional Ordinary Course Professionals, not currently listed on Exhibit A, as future circumstances require ("Additional Ordinary Course Professional" or "Additional Ordinary Course Professional," as applicable), without the need to file individual retention applications or provide further hearing or notice to any party, by filing with the Court a supplement to Exhibit A (the "Supplement") and serving a copy of the Supplement upon the Interested Parties.

17. The Debtors propose that, as with the Ordinary Course Professionals, each Additional Ordinary Course Professional be required to file and serve a Declaration within twenty (20) days after the filing of the Supplement. The Interested Parties would then be given ten (10) days after service of each required Declaration to object to the retention of the Additional Ordinary Course Professional in question. The objection will be served on the Interested Parties and the Ordinary Course Professional in question on or before the Objection Deadline. If any such objection cannot be resolved and withdrawn within ten (10) days after receipt, the matter will be scheduled for a

hearing before the Court on the next regularly-scheduled omnibus hearing or date otherwise agreeable to the involved parties. If no objection is received by the Objection Deadline, or if an objection is withdrawn, the Debtors would be authorized to retain the Additional Ordinary Course Professional as a final matter without further order.

B. Proposed Payment Procedures

18. The Debtors seek authority to pay, without formal application to and order from the Court, the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the postpetition services rendered and expenses incurred.² The Debtors, however, recognize that bills exceeding certain dollar amounts should be subject to the approval procedures otherwise applicable to Chapter 11 Professionals.

19. The Debtors propose that they be permitted to pay, without formal application to the Court by any Ordinary Course Professional, fees and expenses not exceeding a total of \$50,000 per month for each of the Ordinary Course Professionals. The Debtors also propose that aggregate monthly payments to Ordinary Course Professionals for these cases be limited to \$500,000 during these cases, unless additional payments are authorized by the Court.

20. Payments to a particular Ordinary Course Professional would become subject to Court approval under Bankruptcy Code sections 330 and 331, the Federal Rules of Bankruptcy Procedure, the Local Rules of the United States Bankruptcy Court, and such procedures as may be approved by order of the Court for professionals

² The Debtors expressly reserve the right to dispute any such invoices.

involved in the conduct of these cases, only if such payments exceed \$50,000 per month, or \$500,000 in the aggregate during these cases.

C. Quarterly Statements of Payments

21. The Debtors propose to file with the Court a statement of fees and disbursements for each Ordinary Course Professional every one hundred and twenty (120) days and serve such statement on the Interested Parties. The Debtors propose that the first statement be filed on February 8, 2006, and then on each June 8, October 8 and February 8 of every year in which these chapter 11 cases are pending.

22. This quarterly statement will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by each Ordinary Course Professional during the statement period; (c) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by each Ordinary Court Professional during the postpetition period; and (d) a general description of the services rendered by each Ordinary Course Professional.

Applicable Authority

23. Because the Ordinary Course Professionals' employment relates only indirectly to the Debtors' work, because the Ordinary Course Professionals are afforded only marginal discretion in performing their work, and because the Ordinary Course Professionals will not be involved in administering these chapter 11 cases, the Debtors do not believe that the Ordinary Course Professionals are "professionals" within the meaning of Bankruptcy Code section 327, whose retention must be approved by this Court. See, e.g., In re Johns-Manville Corp., 60 B.R. 612, 619-20 (Bankr. S.D.N.Y.

1986) (clarifying that only those professionals involved in the actual reorganization effort, rather than the debtor's ongoing business, require approval under Bankruptcy Code section 327); In re Seatrain Lines, Inc., 13 B.R. 980, 981 (Bankr. S.D.N.Y. 1981) ("[P]ersons in occupations ordinarily considered professions are not necessarily professionals whose retention by the estate requires court approval. For the purposes of section 327(a), 'professional person' is limited to persons in those occupations which play a central role in the administration of the debtor proceeding.").

24. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested herein to avoid any subsequent controversy as to the Debtors' employment and payment of the Ordinary Course Professionals during these chapter 11 cases. The Debtors shall seek specific Court authority under Bankruptcy Code section 327 to employ any other professionals involved in the actual administration of these chapter 11 cases.

25. Relief similar to that requested herein has been granted by courts in other substantial chapter 11 cases. See, e.g., In re Delphi Corp., Case No. 05-44481 (Bankr. S.D.N.Y. Nov. 4, 2005); In re Winn-Dixie Stores, Inc., Case No. 05-11063 (Bankr. S.D.N.Y. Mar. 4, 2005); In re FiberMark, Inc., Case No. 04-10463 (Bankr. D. Vt. April 27, 2004); In re WorldCom, Inc., Case No. 02-13533 (Bankr. S.D.N.Y. Sept. 4, 2002); In re Kmart Corp., Case No. 02-02474 (Bankr. N.D. Ill. Jan. 25, 2002); In re Pathmark Stores, Inc., Case No. 00-2963 (Bankr. D. Del. July 13, 2000); and In re The Grand Union Co., Case No. 00-39613 (Bankr. D.N.J. Oct. 3, 2000).

26. The Debtors believe that the requested procedures are appropriate and in the best interests of their estates and their creditors. Thus, the Debtors request that this Court enter the Order approving the procedures as set forth in this Motion.

Memorandum Of Law

27. Because the legal points and authorities upon which this Motion relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) be deemed satisfied by this Motion.

Notice

28. Notice of this Motion is being provided to (a) the U.S. Trustee; (b) the Securities and Exchange Commission; (c) counsel for any official committee appointed in these cases; (c) counsel for Bank of America, N.A., as agent for the Debtors' secured lenders; (d) counsel for Wells Fargo Bank, N.A., as the indenture trustee for the Debtors' noteholders; and (e) all parties requesting notice in these cases.

29. In light of the nature of the relief requested, the Debtors believe that no other or further notice need be provided.

30. No previous motion or application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) authorizing the Debtors to retain the Ordinary Course Professionals without the necessity of a separate, formal retention application approved by this Court; (b) authorizing the Debtors to compensate the Ordinary Course Professionals for postpetition services rendered, subject to the limitations set forth above, without the necessity of additional Court approval; and (c) granting such other and further relief as is just and proper.

Dated: New York, New York
November 28, 2005

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

By: /s/ Sally McDonald Henry
J. Gregory Milmo (JGM 0919)
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New York, New York 10036
(212) 735-3000

Attorneys for Refco Inc., et al.,
Debtors and Debtors-In-Possession

Exhibit A

List of Ordinary Course Professionals

<u>NAME OF PROFESSIONAL</u>	<u>ADDRESS OF PROFESSIONAL</u>	<u>DESCRIPTION OF SERVICES TO BE RENDERED</u>
Codan Services Ltd.	Clarendon House P.O. Box HM 1022 Hamilton HM DX Bermuda (441) 295-5950	Administrative Support Service and Storage
Compliance Supervisors, Inc.	16 Broad Street Suite 101 Keyport, New Jersey 07735	Securities and Commodities Compliance Consulting
Fairway Management Ltd.	P.O. Box HM 1154 10 Queen Street Hamilton HM EX Bermuda (441) 292-8822	Administrative Support Service and Storage
Henderson & Lyman	175 West Jackson Boulevard Suite 240 Chicago, Illinois 60604 (312) 986-6960	Non-bankruptcy Legal Counsel
Herrick, Feinstein LLP	Two Park Avenue New York, New York 10016 (212) 592-1400	Non-bankruptcy Legal Counsel
Ogihara & Associates LLP	122 East 42nd Street Suite 2515 New York, New York 10168 (212) 662-1010	Non-bankruptcy Legal Counsel
Schiff Hardin LLP	660 Sears Tower Chicago, Illinois 60606-6473 (312) 258-5500	Non-bankruptcy Legal Counsel
Ulmer & Berne LLP	One North Franklin Street Suite 1825 Chicago, Illinois 60606 (312) 324-8000	Non-bankruptcy Legal Counsel

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF LEGAL ORDINARY COURSE PROFESSIONAL

Under 28 U.S.C. § 1746, I, _____, declare that the following is true to the best of my knowledge, information and belief:

1. I am a principal of _____ ("____") which firm maintains offices at _____.

2. Neither I, "____", nor any partner, auditor or other member thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors-in-possession (the "Debtors"), their creditors, or any other party-in-interest, or their attorneys, except as set forth in this declaration.

3. "____", has represented and advised the Debtors in _____ with respect to a broad range of aspects of the Debtors' businesses.

4. The Debtors have requested, and "____" has agreed, to continue to represent and advise the Debtors pursuant to section 327(e) of title 11 of the United States Code (as amended, the "Bankruptcy Code"), with respect to such matters. Additionally, the Debtors have requested, and "____" proposes, to render the following services to the Debtors: _____

5. "____"'s current fee arrangement is _____.

6. Except as set forth herein, no promises have been received by "____" or any partner, auditor or other member thereof as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, orders of this Court, and the Fee Guidelines promulgated by the Executive Office of the United States Trustee.

7. "____" has no agreement with any entity to share with such entity any compensation received by "_____".

8. "_____" and its partners, auditors, and other members may have in the past represented, currently represent, and may in the future represent entities that are claimants of the Debtors in matters totally unrelated to these pending chapter 11 cases. "_____" does not and will not represent any such entity in connection with these pending chapter 11 cases and does not have any relationship with any such entity, attorneys, or accountants that would be adverse to the Debtors or their estates.

9. Neither I, "_____", nor any partner, auditor or other member thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors, or their estates in the matters upon which "_____" is to be engaged.

10. The foregoing constitutes the statement of "_____" pursuant to sections 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016(b).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 200__.

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DECLARATION OF NON-LEGAL ORDINARY COURSE PROFESSIONAL

Under 28 U.S.C. § 1746, I, _____, declare that the following is true to the best of my knowledge, information and belief:

1. I am a principal of _____ ("_____") which firm maintains offices at _____.

2. Neither I, "_____", nor any partner, auditor or other member thereof, insofar as I have been able to ascertain, has any connection with the above-captioned debtors and debtors-in-possession (the "Debtors"), their creditors, or any other party-in-interest, or their attorneys, except as set forth in this declaration.

3. "_____", has represented and advised the Debtors in _____ with respect to a broad range of aspects of the Debtors' businesses.

4. The Debtors have requested, and "_____" has agreed, to continue to represent and advise the Debtors pursuant to section 327(a) of title 11 of the United States Code (as amended, the "Bankruptcy Code"), with respect to such matters. Additionally, the Debtors have requested, and "_____" proposes, to render the following services to the Debtors: _____.

5. "_____"'s current fee arrangement is _____.

6. Except as set forth herein, no promises have been received by "_____" or any partner, auditor or other member thereof as to compensation in connection with these chapter 11 cases other than in accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, orders of this Court, and the Fee Guidelines promulgated by the Executive Office of the United States Trustee.

7. "_____" has no agreement with any entity to share with such entity any compensation received by "_____".

8. "_____" and its partners, auditors, and other members may have in the past represented, currently represent, and may in the future represent entities that are

claimants of the Debtors in matters totally unrelated to these pending chapter 11 cases. " _____ " does not and will not represent any such entity in connection with these pending chapter 11 cases and does not have any relationship with any such entity, attorneys, or accountants that would be adverse to the Debtors or their estates.

9. Neither I, " _____ ", nor any partner, auditor or other member thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors, or their estates in the matters upon which " _____ " is to be engaged.

10. In view of the foregoing, " _____ " is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code.

11. The foregoing constitutes the statement of " _____ " pursuant to sections 329 and 504 of the Bankruptcy Code and Bankruptcy Rules 2014 and 2016(b).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 200__.
