

Luc A. Despina (LD 5141)
Susheel Kirpalani (SK 8926)
Matthew S. Barr (MB 9170)
MILBANK, TWEED, HADLEY & M^cCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005
(212) 530-5000

Proposed Counsel for Official
Committee of Unsecured Creditors
of Refco Inc., et al.

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 OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS,
PURSUANT TO 11 U.S.C. §§ 105(a), 1102(b)(3)(A) AND
1103(c), FOR NUNC PRO TUNC ORDER CLARIFYING
REQUIREMENT TO PROVIDE ACCESS TO INFORMATION**

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

The Official Committee of Unsecured Creditors (the "Committee") of Refco Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), by and through its proposed counsel, Milbank, Tweed, Hadley & M^cCloy LLP, hereby moves this Court for an order, pursuant to sections 105(a), 1102(b)(3)(A) and 1103(c) of title 11 of the United States Code (as amended, the "Bankruptcy Code"), clarifying the requirement to provide access to information for creditors. In support of this motion

(the "Motion"), the Committee respectfully represents as follows:

I. JURISDICTION

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 1102 and 1103 of the Bankruptcy Code.

II. BACKGROUND

2. Chapter 11 Filings. On October 17, 2005 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These cases are jointly administered and have been consolidated for procedural purposes only.

3. Administration. No trustee or examiner has been appointed in these cases. The Debtors continue to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. Creditors' Committee. On October 28, 2005, the United States Trustee appointed the Committee. The Committee represents the interests of all of the unsecured creditors of the Debtors.

III. RELIEF REQUESTED

5. Pursuant to section 1103(c), the Committee is authorized, among other things, to consult with the Debtors, investigate the Debtors, participate in the formulation of a plan and perform such other services as are in the interest of those represented. In addition, as part of the Committee's duties, pursuant to section 1102(b)(3)(A), the Committee is required to provide access to information for creditors represented by the Committee.

6. By this Motion, the Committee seeks entry of an order, nunc pro tunc to the date of the Committee's appointment, clarifying, until such time as a protocol regarding the dissemination of information can be established, the requirements of section 1102(b)(3)(A) of the Bankruptcy Code.¹ The relief requested herein will help ensure that confidential, privileged, proprietary and/or material non-public information will not be disseminated to the detriment of the Debtors' estates and will aid the Committee in performing its statutory function.

¹ The Committee does not, at this time, seek any relief with respect to the means for implementing section 1102(b)(3)(A) (providing access to information), or any relief with respect to sections 1102(b)(3)(B) (soliciting and receiving creditor input) or (C) (provision of additional reports or disclosures) of the Bankruptcy Code. The Committee is currently developing a means for satisfying Congress' legitimate concern that creditors represented by the Committee have fair access to information and input about the Debtors and their prospects of recovery.

7. The Committee was appointed a few days ago and will soon commence negotiations with the Debtors of a protocol regarding the dissemination of information which will be submitted to the Court for approval at the earliest possible date. In the interim, the Committee will endeavor to disseminate as much non-confidential information as possible to its constituents.

IV. BASIS FOR RELIEF REQUESTED

A. Statute Requires Undefined "Access to Information"

8. On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") was enacted into law. The majority of provisions in the Act became effective on October 17, 2005, 180 days after the date of enactment.

9. Section 1102 of the Bankruptcy Code governs the appointment of statutory creditors' and equity security holders' committees. See 11 U.S.C. § 1102(a). Among the myriad amendments and additions made to the Bankruptcy Code, a new statute, section 1102(b)(3), was added to the Bankruptcy Code and provides as follows:

- A committee appointed under subsection (a) shall --
- (A) provide access to information for creditors who --
 - (i) hold claims of the kind represented by that committee; and
 - (ii) are not appointed to the committee;

- (B) solicit and receive comments from the creditors described in subparagraph (A); and
- (C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

10. When a statute is clear and unambiguous, "the sole function of the courts is to enforce it according to its terms." U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989) (quoting Caminetti v. United States, 242 U.S. 470, 485 (1917)). However, in "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters . . . the intention of the drafters, rather than the strict language, controls." Id. at 242-43 (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) (internal quotations omitted)).

11. The Committee respectfully submits that section 1102(b)(3)(A) is unclear and ambiguous. The statute simply requires a committee "to provide access to information," yet sets forth no guidelines as to the type, kind and extent of the information to be provided. In its extreme, section 1102(b)(3)(A) could be read as requiring a committee to provide access to *all* information provided to it by a debtor, or developed through exercise of its investigative function, regardless of whether the information is confidential, privileged, proprietary or material non-public information and regardless of whether disseminating such information implicates

securities laws disclosure requirements. See 17 C.F.R. §§ 243.100 to 243.103 (2005). Although the Committee does not believe that such an interpretation of section 1102(b)(3)(A) can be supported, there is a need to clarify the scope of this new section until an "information sharing" protocol can be established.

12. The legislative history does not provide any further guidance on this point and merely reiterates the language of section 1102(b)(3). See H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 87 (2005) ("Section 405(b) requires the committee to give creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments for these creditors and, pursuant to court order, make additional reports and disclosures available to them.")

13. Given the ability to share information through the Internet or otherwise, the drafters of section 1102(b)(3) likely intended this provision to mean that a committee's constituency should have easier access to relevant public information about a debtor without the burden of retaining counsel to monitor the numerous proceedings within a bankruptcy case. Congress could not have intended for a committee to be required to provide unfettered access to every type and kind of information that a committee receives from a debtor. If this

had been the intention, section 1102(b)(3) would then frustrate numerous provisions of the Bankruptcy Code, including the plenary authority to obtain information and act in a fiduciary capacity pursuant to section 1103(c) of the Bankruptcy Code.

14. Absent clarification, a statutory committee's efforts may be frustrated because debtors will be reluctant to share confidential, sensitive financial and strategic information with a committee -- the exact information a committee needs and typically receives to assist it in the discharge of its fiduciary obligations. In addition, committees will be reluctant to pursue an investigation of potential targets of litigation on behalf of a debtor's estate, and to develop their own analyses of estate assets. Absent relief of the kind sought herein, debtors will undoubtedly be concerned that information shared with the statutory fiduciary may be shared with the public, including competitors and interested acquirors. Similarly, committees will be concerned that the fruits of their own investigation may be disseminated to inappropriate parties. In turn, these concerns will impede a statutory committee's own efforts to obtain information, which will undermine the committee's ability to maximize creditor recoveries. Certainly, the drafters could not have intended section 1102(b)(3) to hinder the Committee's authority under

section 1103(c) of the Bankruptcy Code. These statutes must be harmonized consistently with the overall purposes of chapter 11.

B. Creditors' Committees Rights and Powers

15. Section 1103 of the Bankruptcy Code sets forth the rights and powers of a committee. 11 U.S.C. § 1103. Those rights and powers include "consult[ing] with the . . . debtor in possession concerning the administration of the cases" (11 U.S.C. § 1103(c)(1)) and "investigat[ing] the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan" (11 U.S.C. § 1103(c)(2)).

16. In order to assist a statutory committee with faithfully performing its function -- which includes evaluating a debtor's business plan and reorganization strategy -- debtors will provide committees with confidential, material non-public information, including in draft form. See 7 Collier on Bankruptcy ¶ 1103.05[2][a], at 1103-29 & 30 (KING, 15th ed. rev. 2005). In that regard, debtors often condition the dissemination of such information on each committee member (and,

in certain instances, committee professionals) agreeing to maintain such information in confidence.²

17. Section 1102(b)(3)(A), however, provides no guidance on the extent to which a committee is obligated to provide confidential, proprietary or material non-public information to its constituency.

18. In these cases, the Debtors have specifically raised their concerns with sharing any confidential, proprietary or material non-public information with the Committee based upon their legitimate concern that the Committee will be required to provide unfettered access to such information to its constituency. Sharing such information without limitations before a protocol can be negotiated and approved by the Court will be detrimental to the Debtors' businesses and ability to maximize value. Indeed, providing unfettered access to such information undoubtedly will allow competitors of the Debtors to use such information, including any business plan of the Debtors, trade secrets, customer lists or other proprietary information, to that competitor's advantage and, more importantly, to the disadvantage of the Debtors.

19. One example of the myriad issues implicated by a literal reading of section 1102(b)(3) of the Bankruptcy Code

² Typically, statutory committees have bylaws governing the conduct of its members, including the non-disclosure of confidential information concerning the debtors.

relates to sharing the Debtors' material contracts with a committee. As is typical with companies in competitive industries, many of the Debtors' contracts (including key executive employee agreements) contain confidentiality provisions. Thus, the Debtors may be contractually precluded from sharing such information with the Committee if it is required to give unfettered access to such information to creditors at large, some of whom may be competitors of the counterparty to the contract and may be seeking such information for their own parochial interests. Congress' broad brushstroke has produced a frightening landscape for debtors such as these which are trying to stabilize their businesses and enhance the related value available to creditors.

20. Another concern arises because the Committee's provision of unfettered access to information to its constituents could impact the attorney-client and work product privileges between the Committee and their counsel or other agents. Cf. In re Baldwin-United Corp., D.H., 38 B.R. 802, 805 (Bankr. S.D. Ohio 1984) (creditors' committee entitled to protection of attorney-client privilege). This is particularly relevant given the Committee's crucial investigative powers and the likelihood that the Committee will be gathering information relevant to potential causes of action of the estates.

C. Harmonizing Regulation FD

21. Importantly, with respect to public companies, the Securities and Exchange Commission ("SEC") has adopted Regulation Fair Disclosure ("Regulation FD") which is a disclosure rule that addresses selective disclosure of material non-public information. 17 C.F.R. §§ 243.100 to 243.103 (2005). The regulation provides that when an issuer, or person acting on behalf of such issuer, has disclosed material non-public information to certain persons, such issuer must make public disclosure of that information. Id. § 243.100(a). Regulation FD enumerates certain categories of persons to whom selective disclosure may not be made (i.e., certain securities market professionals and holders of the issuer's securities). Id. at 243.100(b).

22. Regulation FD contains, however, an important exception that -- prior to the enactment of section 1102(b)(3) - - likely exempted communications by debtor-issuers with statutory creditors' committees without significant complication. Specifically, Regulation FD provides:

Paragraph (a) [public disclosure requirements] of this section shall not apply to a disclosure made:

To a person who expressly agrees to maintain the disclosed information in confidence.

17 C.F.R. § 243.100(b)(2).

23. Thus, even if Regulation FD would not require the Debtors to make public disclosures of information shared with the Committee, provided the Committee agreed, in its bylaws, to maintain such information in confidence, Regulation FD may be triggered if such information were required to be shared with unsecured creditors of the Debtors. Unless clarified by this Court, section 1102(b)(3) of the Bankruptcy Code has the potential to trigger Regulation FD when material non-public information is disseminated to a limited group of persons -- the particular creditor constituency (which would undoubtedly include one or more of the persons which Regulation FD was intended to cover) -- without disseminating such information to the public generally.

24. Any argument that this Court could impose a general materiality standard for deciding what information can and cannot be shared is simply too vague a standard and would be too hard to enforce. Unlike with Regulation FD where the SEC has delineated the types and kinds of information that it considers material, the Bankruptcy Code provides no guidance and, certainly, the Debtors would hesitate to share, and the Committee would be concerned to receive, information that they deem material if there is any room for creditors to take the position that it is not material. Under Regulation FD it would be the Debtors who would potentially incur liability under the

securities laws (which would come at a price to be paid by the Committee's creditor constituency). For these reasons too, the Debtors are likely to be reluctant to share confidential, proprietary or material non-public information with the Committee without assurances that such information would be kept confidential.

25. Accordingly, the Committee respectfully requests that this Court clarify the requirements of section 1102(b)(3) consistent with the terms of this Motion. To the extent any parties in interest wish to object to the relief requested herein, such party will be required to file an objection in accordance with the procedures set forth in the proposed order annexed hereto as Exhibit A (the "Proposed Order"), but the Committee intends to use the next 20 days to negotiate an information dissemination protocol with the Debtors, and such a protocol may very well resolve any objection that parties in interest may have to the Proposed Order.

D. Court's Inherent Power

26. Under section 105(a) of the Bankruptcy Code, the Court may "issue any order . . . that is necessary or appropriate to carry out the provisions of this title." The Committee believes the relief requested herein is necessary for the Committee to fulfill their statutory function as contemplated by section 1103(c) of the Bankruptcy Code.

27. The Committee submits that the relief requested herein is appropriate and well within the authority of this Court. As section 1102(b)(3)(A) of the Bankruptcy Code might otherwise have a substantial "chilling effect" on information the Debtors may be willing to share with the Committee, or on the Committee's development of independent analyses, it cannot be seriously questioned that the relief requested herein is "necessary and appropriate to carry out the provisions of [the Bankruptcy Code]" pursuant to section 105(a) of the Bankruptcy Code.

V. NOTICE

28. The Committee provided notice (by electronic mail, hand, fax or overnight mail or courier) of the interim hearing on this Motion of the interim hearing to: (a) the Debtors, (b) the Office of the United States Trustee and (c) all parties that have filed notices of appearance and request for service of documents in these cases (collectively, the "Notice Parties").

29. Following entry of the Proposed Order, of which the Committee is seeking entry, on an interim basis, on notice to the United States Trustee and the Debtors only, the Committee proposes to provide notice of the Motion and the Proposed Order by overnight delivery service or hand delivery to each of the

Notice Parties. The Debtors submit that, under the circumstances, no other or further notice is required.

30. As set forth in the Proposed Order, any objection to the relief requested in the Motion on a final basis shall be in writing and shall be filed with the Court by no later than November 21, 2005 at 4:00 p.m. (New York time) and served on:

- (i) Milbank, Tweed, Hadley & McCloy LLP, proposed counsel for the Committee, 1 Chase Manhattan Plaza, New York, New York 10005, Attention: Luc A. Despins, Esq. and Susheel Kirpalani, Esq.;
- (ii) Skadden, Arps, Slate, Meagher & Flom LLP, proposed counsel for the Debtors, Four Times Square, New York, New York 10036, Attention: J. Gregory Milmo, Esq. and Sally McDonald Henry, Esq.; and
- (iii) the Office of the United States Trustee, 33 Whitehall Street, Suite 2100, New York, New York 10004, Attention: Deirdre A. Martini, Esq. and Alicia M. Leonhard, Esq.;

so as to be actually received by such filing deadline. The Interim Order provides that any modifications to the Interim Order shall only affect information provided by the Debtors to the Committee after the date of any such modifications.

VI. NO PRIOR REQUEST

31. No previous request for the relief sought herein has been made to this or any other court.

VII. WAIVER OF MEMORANDUM OF LAW

32. Because this Motion sets forth the authorities relied upon herein, the Committee respectfully submits that the Motion itself satisfies the requirements of Local Bankruptcy Rule 9013-1(b) regarding the submission of a memorandum of law.

VIII. CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the Motion nunc pro tunc to October 28, 2005, and awarding such other and further relief as may be just and proper.

Dated: New York, New York
November 1, 2005

MILBANK, TWEED, HADLEY & M^cCLOY LLP

By: /s/ Luc A. Despins

Luc A. Despins (LD 7543)
Susheel Kirpalani (SK 8926)
Matthew S. Barr (MB 9170)
1 Chase Manhattan Plaza
New York, New York 10005-1413
(212) 530-5000

Proposed Counsel for Official
Committee of Unsecured Creditors
of Refco Inc., et al.

EXHIBIT A

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

**ORDER, PURSUANT TO 11 U.S.C. §§ 105(a),
1102(b)(3)(A) AND 1103(c), CLARIFYING
REQUIREMENT TO PROVIDE ACCESS TO INFORMATION**

Upon the motion (the "Motion") of the Official Committee of Unsecured Creditors (the "Committee") of Refco Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), for entry of an order, pursuant to sections 105(a), 1102(b)(3)(A) and 1103(c) of title 11 of the United States Code (as amended, the "Bankruptcy Code"), clarifying the requirements of section 1102(b)(3)(A); and notice of the Motion having been provided in accordance with the Motion; and it appearing that no other or further notice is required; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is granted on an interim basis.
2. Notwithstanding anything contained in section 1102(b)(3)(A) to the contrary, the Committee shall not be required to disseminate any non-public information concerning the Debtors, including (without limitation) with respect to the

acts, conduct, assets, liabilities and financial condition of the Debtors, the operation of the Debtors' business and the desirability of the continuance of such business, and any other matter relevant to these cases or to the formulation of a chapter 11 plan, whether provided (voluntarily or involuntarily) by or on behalf of the Debtors or by any third party, to anyone other than its members, counsel, advisors, consultants and all of their agents and employees.

3. The Debtors are directed to assist the Committee with identifying any non-public information of the Debtors.

4. Nothing herein shall prejudice the right of the Committee, in its sole discretion, to (i) provide access to information for unsecured creditors, or (ii) solicit and receive comments from such creditors, to the extent otherwise consistent with law.

5. Any objection to the relief requested in the Motion being granted on a final basis must be filed with the Court, Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on or before November 21, 2005 at 4:00 p.m. (New York time) and served on: (i) Milbank, Tweed, Hadley & M^cCloy LLP, proposed counsel for the Committee, 1 Chase Manhattan Plaza, New York, New York 10005, Attention: Luc A. Despins, Esq. and Susheel Kirpalani, Esq.; (ii) Skadden, Arps, Slate, Meagher & Flom LLP, proposed counsel for the Debtors, Four Times Square,

New York, New York 10036, Attention: J. Gregory Milmo, Esq. and Sally McDonald Henry, Esq.; and (iii) the Office of the United States Trustee, 33 Whitehall Street, Suite 2100, New York, New York 10004, Attention: Deirdre A. Martini, Esq. and Andrew Velez-Rivera, Esq.; so as to be actually received by such filing deadline.

6. There shall be a hearing held on November [28], 2005 at 10:00 a.m. to consider any objections to the Motion and entry of this Order on a final basis.

7. Any modifications to this Order shall only affect information provided by the Debtors to the Committee after the date of any such modifications to this Order.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
November __, 2005

UNITED STATES BANKRUPTCY JUDGE

Luc A. Despina (LD 5141)
Susheel Kirpalani (SK 8926)
Matthew S. Barr (MB 9170)
MILBANK, TWEED, HADLEY & M^CCLOY LLP
1 Chase Manhattan Plaza
New York, NY 10005
(212) 530-5000

Proposed Counsel for Official
Committee of Unsecured Creditors
of Refco Inc., et al.

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

**DECLARATION OF LUC A. DESPINS IN SUPPORT MOTION
OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS,
PURSUANT TO 11 U.S.C. §§ 105(a), 1102(b)(3)(A)
AND 1103(c), FOR NUNC PRO TUNC ORDER CLARIFYING
REQUIREMENT TO PROVIDE ACCESS TO INFORMATION**

LUC A. DESPINS hereby declares under penalty of
perjury pursuant to section 1746 of title 28 of the United
States Code:

1. I am an attorney admitted to practice before
this Court and a member of Milbank, Tweed, Hadley & M^CCloy
LLP, proposed counsel for Official Committee of Unsecured
Creditors (the "Committee") of Refco Inc. and its
affiliated debtors and debtors in possession in the above-
captioned cases (collectively, "Refco" or the "Debtors").

2. I submit this declaration in support of motion (the "Motion") of the Committee for entry of an order, pursuant to sections 105(a), 1102(b) (3) (A) and 1103(c) of title 11 of the United States Code (as amended, the "Bankruptcy Code"), clarifying the requirements of section 1102(b) (3) (A).

3. For all the reasons set forth in the Motion, the Committee submits that the relief requested is appropriate and well within the authority of this Court. The Committee further submits that entry of the proposed Order on an interim basis, upon notice to only the Debtors and the United States Trustee, is appropriate because (i) the Committee was formed on October 28, 2005 and assumed at that time a duty to provide information to creditors; (ii) the Debtors have raised concerns with furnishing non-public information to the Committee because of the possibility that this information might be shared, without confidentiality assurances, with the Committee's constituents; and (iii) the Committee cannot effectively carry out its duties without an opportunity to negotiate a protocol for information dissemination with the Debtors and seek approval from the Court for such protocol.

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

Executed on November 1, 2005.

/s/ Luc A. Despins
Luc A. Despins

EXHIBIT A

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

**ORDER TO SHOW CAUSE REGARDING MOTION OF OFFICIAL
COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO 11
U.S.C. §§ 105(a), 1102(b)(3)(A) AND 1103(c), FOR
NUNC PRO TUNC ORDER CLARIFYING REQUIREMENT TO
PROVIDE ACCESS TO INFORMATION**

Upon the annexed Motion Of Official Committee Of
Unsecured Creditors (the "Committee"), Pursuant To 11 U.S.C.
§§ 105(a), 1102(b)(3)(A) And 1103(c), For Nunc Pro Tunc Order
Clarifying Requirement To Provide Access To Information, dated
October 31, 2005 (the "Motion"); and upon the annexed
Declaration of Luc A. Despins (the "Despins Declaration"), in
which the Committee requests the issuance of an order to show
cause; and sufficient cause appearing therefore; it is hereby

ORDERED, that all interested parties show cause, by
filing an objection with the Bankruptcy Court, Alexander
Hamilton Customs House, One Bowling Green, New York, New York
10004, on or before November 21, 2005 at 4:00 p.m. (New York
time) and serving such objection on: (i) Milbank, Tweed, Hadley
& McCloy LLP, proposed counsel for the Committee, 1 Chase
Manhattan Plaza, New York, New York 10005, Attention: Luc A.
Despins, Esq. and Susheel Kirpalani, Esq.; (ii) Skadden, Arps,

Slate, Meagher & Flom LLP, proposed counsel for the Debtors, Four Times Square, New York, New York 10036, Attention: J. Gregory Milmoe, Esq. and Sally McDonald Henry, Esq.; and (iii) the Office of the United States Trustee, 33 Whitehall Street, Suite 2100, New York, New York 10004, Attention: Deirdre A. Martini, Esq. and Andrew Velez-Rivera, Esq.; so as to be actually received by such filing deadline, setting forth why the Order, Pursuant To 11 U.S.C. §§ 105(a), 1102(b)(3)(A) And 1103(c), Clarifying Requirement To Provide Access To Information, dated October 31, 2005 (the "Order," a copy of which is annexed to the Motion), which was entered on an interim basis by the Bankruptcy Court, on notice to the Debtors and the United States Trustee, on November __, should not be entered on a final basis; and it is further

ORDERED, that a hearing to consider any objections to the Motion and entry of the Order on a final basis shall take place on November [28], 2005, at 10:00 a.m.; and it is further

ORDERED, that service by facsimile or overnight delivery of a copy of this Order to Show Cause, the Motion, the Order, and the Despina Declaration on (i) Skadden, Arps, Slate, Meagher & Flom LLP, proposed counsel for the Debtors, Four Times Square, New York, New York 10036, Attention: J. Gregory Milmoe, Esq. and Sally McDonald Henry, Esq., (ii) the Office of the United States Trustee, 33 Whitehall Street, Suite 2100, New

York, New York 10004, Attention: Deirdre A. Martini, Esq. and
Alicia M. Leonhard, Esq., and (iii) all parties that have filed
notices of appearance and request for service of documents in
these cases, on or before November ____, 2005 at ____:____ __.m.,
shall constitute good and sufficient service and that no other
or further service is required.

Dated: November __, 2005
New York, New York

UNITED STATES BANKRUPTCY JUDGE