

WINSTON & STRAWN

SUITE 5000

ONE FIRST NATIONAL PLAZA

CHICAGO, ILLINOIS 60603

(312) 558-5600

TWX 910-221-5467

JOHN J. GAINES III

(312) 558-5825

DEC 17 1981

Mr. Peter J. Romeo, Esquire
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Re: Refco Capital Corporation: Issuance of Promissory Notes
under Section 3(a)(3) of the Securities Act of 1933

Dear Mr. Romeo:

On behalf of Refco Capital Corporation (the "Company"), we hereby request that the Division of Corporation Finance recommend that the Securities and Exchange Commission (the "Commission") take no action with respect to a proposed offering by the Company of short-term promissory notes (the "Notes") without compliance with the registration requirements of the Securities Act of 1933 (the "Act") in reliance upon the exemption provided by Section 3(a)(3) of the Act.

The Company

The Company, organized under the laws of the State of Delaware on October 5, 1981, is affiliated with a group of associated but independent companies commonly known as the Refco Group. Since 1974 the Refco Group companies, including Refco, Inc., have provided various financial and brokerage services to numerous institutional and individual customers primarily engaged in commodities trading and processing. Refco, Inc. is a clearing member of all major commodity exchanges nationwide and is one of the largest commodity firms in the United States.

The Refco Group companies provide various financial services, including purchasing and selling of high grade government and municipal bonds, providing custom cattle feeding and precious metals refining, structuring trading and hedging programs, furnishing commodities research for agricultural and financial commodity traders, and manufacturing computer terminals and software packages for the commodities industry. The Company was formed principally to provide financing for the Refco Group companies and their customers who are engaged in physical commodities trading or processing. In this connection, customers of the Refco Group have indicated considerable interest both in

investing in short term commercial paper to be issued by the Company and in borrowing from the Company on a short term basis.

In response to growing customer investment and financing needs, the Company intends to issue the Notes and to use the proceeds to develop a high quality loan portfolio. The quality of the portfolio will be preserved through the placement of funds with the most credit worthy and industry recognized commodities processors and traders. Further, the Company intends to institute a financial management program designed to effect a net return on assets comparable to that of other leading lending institutions. The Company's activities will include the following: (i) the financing of physical commodities trading by companies and partnerships affiliated with the Refco Group; (ii) the financing of various current transactions for corporate and individual customers of Refco, Inc. and its affiliated entities as well as unrelated third parties; and (iii) the providing of non-lending financial services to each of the above types of customers. Loans made to borrowers will be made primarily against physical commodities securing such loans.

In managing the portfolio's idle funds, the Company may from time to time also own physical commodities. The physical commodities shall have liquidity characteristics comparable to that of actual cash, i.e., gold, silver, certificates of deposit, and United States Treasury bills. Ownership of such commodities, because they will be hedged or pre-sold, shall provide added flexibility to the Company's portfolio management for maintaining and improving the value of the portfolio.

The Company has a capitalization of \$10 million composed of \$1 million of common stock and \$9 million of preferred stock.

The Company submits this request for issuing the Notes with the intention of applying the proceeds therefrom to those activities described above in (i) and (ii).

The Notes

The Company proposes to offer, issue and sell the Notes without compliance with the registration requirements of the Act and without the involvement of underwriters or broker-dealers in reliance upon the exemption from registration provided by Section 3(a) (3) of the Act.

The Notes, which will be fully negotiable, will be offered and sold from time to time and may be either interest bearing or sold at discount to mature at par. The Notes will mature at various times and may be renewed or extended. However, in no event will any of the Notes mature, with or without extensions or renewals, more than nine months from the date of issuance. The Notes will be issued in denominations of not less than \$25,000, but it is anticipated that nearly all of the Notes will be issued in denominations substantially in excess of \$25,000. In addition, the Notes will be

placed with financial institutions and sophisticated individual investors, the latter being long term customers of the Refco Group who have a significant net worth. The Notes will not be advertised or solicited to the general public through the media. Further, in cases involving sales to individuals, each purchaser will represent in writing to the Company that he has access to investments in high grade commercial paper and that he meets the general criteria of investor suitability found in Rule 146 under the Act.

The Company proposes to issue the Notes on a book-entry basis. The Notes shall be held by the Company as agent for the benefit of the investor with written confirmation of the issuance of the Notes and specifics as to the Note's principal amount, maturity term and interest rate being immediately sent to the investor. Should the investor at any time request issuance of the actual Note, the Company shall promptly do so.

Use of Proceeds

The proceeds from the sale of the Notes will become part of the general operating funds of the Company and are intended to be used for current transactions including making short term loans to corporations, individuals and other entities engaged primarily in the business of trading in the commodities markets. Substantially all of the loans to be made by the Company will be directly secured by the financed commodities of individual or institutional dealers. Emphasis will be placed on extending loans for financing commodities which can be hedged on commodity futures exchanges.*

The loans will generally be applied to one or more of the following types of financings:

a) Hedged commodities evidenced by title documents (i.e., warehouse receipts and exchange certificates) and deliverable on commodity futures exchanges.

b) Hedged commodities evidenced by title documents but not deliverable on commodity futures exchanges. The borrower's price risk associated with holding such commodities may be lessened either by his contracting in the forward market or by his undertaking a futures position in a commodity whose relative price movements are highly correlated to the price movements of the particular commodity, e.g., a municipal bond's or a corporate

* Hedging is the buying or selling of commodity futures contracts to protect against possible adverse price changes in the underlying commodity. Hedging in the commodity futures contracts counterbalances an individual's position in the actual commodity with an equal and opposite futures position. In this way, the hedger replaces the risk of price fluctuation with a lesser risk of a change in the relationship between the cash price and the futures price of a commodity. This relationship is commonly referred to as the basis.

bond's price risk may be hedged by taking futures positions in U.S. Treasury bond futures.

c) Physical commodities evidenced by title documents which, while not hedged, represent only a portion of the borrower's investment portfolio, and whose potential risk exposure is adequately covered by the portfolio's overall value.

d) Physical commodities as in (c) above which are not evidenced by documents.

e) Unsecured loans for anticipatory hedging of forward commitments in physical commodities. Unsecured loans will be applied to the borrower's cost of the initiation and maintenance of a hedged position on a futures exchange. The cost of hedging an anticipated commodity purchase is the initial and maintenance margin required in all commodity futures transactions. As distinguished from common stock margins which are a credit restriction, commodity margins are a form of escrow deposit to assure contract performance. Commodity margins, characteristically, represent a small percentage of the face amount of the futures contract. Margins are marked to market and the required amount of margin at any given time depends on price volatility and risk. The unsecured loan will be applied to the cost of initiating and maintaining the anticipatory hedge.

f) Unsecured loans for working capital purposes to customers with a well established and continuous business relationship with the Refco Group.

Additional borrowings may be obtained by the Company in the future through the issuance of commercial paper backed by stand-by letters of credit from major banks and lending institutions. Loans made to commodities dealers with the proceeds of this commercial paper will be secured by the commodities financed as described in a) through d) above. The Company may reassign such collateral to the banks and lending institutions in accordance with applicable lending agreements. It should be noted that the collateral securing loans made with the proceeds from the sale of the Notes will be segregated from any asset eligible or required for pledging by the Company pursuant to such bank or institutional lending.

Discussion

In our view, the issuance of the Notes is exempt from compliance with the registration requirements of the Act by virtue of Section 3(a)(3) thereof because the Notes will be used for current transactions and will have a maturity not exceeding nine months.

In this connection, it is noted that Securities Act Release No. 4412 (1961) states in pertinent part:

. . . "Thus the Senate Report on the Securities Act of 1933 explained the purpose of Section 3(a)(3) as follows:

'Notes, drafts, bills of exchange, and bankers' acceptances which are commercial paper and arise out of current commercial, agricultural, or industrial transactions, and which are not intended to be marketed to the public, are exempted * * * It is not intended under the bill to require the registration of short-term commercial paper which, as is the usual practice, is not advertised for sale to the general public.' (S. Rep. No. 47 on S. 875, 73rd Cong., 1st Sess. (1933), pp. 3-4)".

The issuance of the Notes for the purpose of financing those transactions described above is the issuance of notes which arise out of "current transactions" or "the proceeds of which have been or are to be used for current transactions" and is within the meaning of Section 3(a)(3) of the Act. As indicated in the above quoted release, short term, high grade commercial paper issued by finance companies to carry their installment loans normally meets the requirements of the Section 3 (a)(3) exemption. In this case, the Company proposes to issue commercial paper in the same manner as a finance company to facilitate transactions in the normal course of business within the commodities industry. The transactions to be financed will typically involve the sale of the actual commodities with a portion of the proceeds therefrom being applied to the repayment of the loan. (See Lowenstein, The Commercial Paper Market and Federal Securities Law, 2 Corp. L. Rev. 128, 139, n. 42 (1981), citing Baxter, The Commercial Paper market 5, n. 6 (1966)).

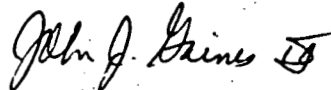
Consequently, the items proposed to be financed by the Company are assets (i.e., physical commodities) easily convertible into cash and, indeed, are generally more liquid than the liquid inventories of an industrial or mercantile company. Items of this nature are, in our view, covered by the exemption from registration provided by Section 3(a)(3) of the Act. (See Securities Act Release No. 4412 (1961); Securities Act Release No. 33-401 (1935)).

For your reference, the Company's proposed uses of the proceeds from the sale of the Notes are similar to those referred to in previous no-action letters issued by the staff of the Division of Corporation Finance. In this regard, your attention is directed to the staff's letters in U.S. Bancorp (publicly available October 31, 1977) concerning agricultural loans described under the category of "short term commercial loans" and in Wells Fargo & Company (publicly available September 15, 1980). In Wells Fargo, the staff reviewed an operation involving the making of "producer" loans for the purpose of financing the current operations of various agricultural producers, including cattle and cow/calf feeding operations of livestock producers and the growing operations of wheat, corn and cotton producers. In addition, "processor loans" were made to persons or firms engaged in the processing or storage of various agricultural products in cases in which the loans would be secured by products being stored or processed by the borrower.

On the basis of all of the foregoing, we request that the staff of the Division of Corporation Finance concur with our view and recommend that the Commission take no enforcement action with respect to the proposed offer and sale of the Notes without compliance with the registration requirements of the Act in reliance upon the exemption from registration provided by Section 3(a)(3) thereof.

If you should have any questions or require any additional information, please do not hesitate to call the undersigned collect at (312) 558-5825, or Tone N. Grant, Executive Vice President and General Counsel of Refco, Inc. and its related entities at (312) 930-6507.

Very truly yours,



John J. Gaines III