



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE REFCO SECURITIES LITIGATION :  
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KENNETH M. KRYS, et al., :  
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Plaintiffs, :  
:  
-v- :  
:  
CHRISTOPHER SUGRUE, et al., :  
:  
Defendants. :  
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07 MDL 1902 (JSR)  
  
08 Civ. 3065 (JSR)  
08 Civ. 3086 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On August 10, 2011, Special Master Daniel J. Capra issued a Report and Recommendation in the above-captioned case recommending that defendants PriceWaterhouseCoopers' and Mari Ferris's motion to dismiss plaintiffs' claims against them be granted in part and denied in part with respect to defendant PwC and granted in full with respect to defendant Ferris. After both defendants and plaintiffs timely submitted objections<sup>1</sup> and each party responded thereto, the Court

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<sup>1</sup> In making their objections, plaintiffs, without any leave of Court, improperly attempted to introduce for the first time the affidavit and expert report of R. David Wallace, CPA, CFF, which was not before Special Master Capra when he issued his Report and Recommendation. This was improper for two reasons. First, the Court cannot consider affidavits in ruling on a motion to dismiss. See Cyril v. Neighborhood P'ship II Hous. Dev. Fund, 124 F. App'x 26, 27 n.2 (2d Cir. 2005). Second, the entire purpose of the Court appointing not one, but two Special Masters in this case, who have prepared detailed, thoughtful, and thorough Reports and Recommendations on the issues in the

heard oral argument on October 12, 2011 and considered the entire matter de novo. Having done so, the Court finds itself in agreement in all material respects with Special Master Capra's superb Report and Recommendation and hereby adopts it in full as if incorporated herein.

SO ORDERED.



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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
October 24, 2011

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sprawling and ongoing Refco multi-district litigation, would be for naught if the parties could simply introduce new evidence and raise new arguments to this Court that were not fairly presented first to the Special Masters whenever a party did not like a Special Master's recommendation. Cf. Hous. Works, Inc. v. Turner, 362 F. Supp. 2d 434, 438 (S.D.N.Y. 2005) ("[L]itigants cannot be permitted to use litigation before a magistrate judge as something akin to a spring training exhibition game, holding back evidence for use once the regular season begins before the district judge."). Without a "most compelling reason" explaining why evidence was not first presented to the Special Masters, this Court will not consider evidence raised for the first time in briefing on objections to a Report and Recommendation of the Special Masters. Id.