



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

June 2, 2006

Andrew Levander, Esq.
Guy Petrillo, Esq.
Dechert LLP
30 Rockefeller Plaza
New York, New York 10112

Re: BAWAG P.S.K. and Österreichischer Gewerkschaftsbund

Gentlemen:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will not criminally prosecute (1) BAWAG P.S.K., Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG (the "Bank"); (2) the subsidiaries and corporate affiliates of the Bank listed on Schedule 1 hereto (collectively "BAWAG"); (3) Österreichischer Gewerkschaftsbund ("ÖGB"); or (4) the affiliates of ÖGB listed on Schedule 2 hereto (collectively with BAWAG the "BAWAG Parties") for any crimes (except for criminal tax violations as to which this Office cannot and does not make any agreement) related to the BAWAG Parties' participation in a scheme to defraud investors in and creditors of Refco Group Limited, LLC, ("Refco") and its related predecessor and successor entities, between in or about 1999 and in or about October 2005, as detailed in part in the Indictment filed in *United States v. Phillip R. Bennett*, 05 Cr. 1192 (NRB) ("the Indictment"), and as detailed in part in a statement that is not disputed by the BAWAG Parties solely for the purpose of the resolution of this criminal proceeding as it relates to the BAWAG Parties, and attached as Exhibit A to this Agreement and incorporated by reference.

The BAWAG Parties accept and acknowledge responsibility for the conduct of the former officers of BAWAG in orchestrating and directing others to carry out the following conduct (as set forth in greater detail in the statement annexed as Exhibit A and incorporated by reference): (1) from in or about 2000 through in or about 2005, the Bank loaned Phillip Bennett's holding company hundreds of millions of dollars for brief periods over Refco's fiscal year-end in order to assist Bennett in hiding from Refco's investors and creditors Bennett's substantial indebtedness to Refco; and (2) from in or about 2000 through in or about 2005, the BAWAG Parties sought and obtained Bennett's assistance in disguising on the Bank's balance sheet the existence of approximately €350 million of investment losses sustained by the Bank.

Moreover, if the BAWAG Parties fully comply with the understandings specified in this Agreement, no information provided by or on behalf of the BAWAG Parties or any testimony given by any then-current employees of the BAWAG Parties at the request of this Office (or any other information directly or indirectly derived therefrom) will be used against the BAWAG Parties in any criminal tax prosecution. This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to the BAWAG Parties and to no other entities or individuals. The BAWAG Parties expressly understand that the protections provided to the BAWAG Parties by this Agreement shall not apply to any successor entities, whether the successor's interest arises through a merger or plan of reorganization, unless and until such successor formally adopts in an executed writing the obligations of the BAWAG Parties set forth in this Agreement. The BAWAG Parties agree that, if they sell or merge all or substantially all of the Bank's business operations as they exist as of the date of this Agreement to a single purchaser or group of affiliated purchasers during the term of this Agreement, including a sale of the Bank's stock or substantially all of the assets of the Bank, or any other interests, it shall require the contracting party to agree to a provision binding the purchaser/successor to the obligations in this Agreement. The protections arising from this agreement will not apply to any purchaser/successor unless such purchaser/successor enters into a written agreement, on terms acceptable to the Office, agreeing in substance (a) to be bound in any court proceeding brought by this Office by the statement in Exhibit A; and (b) to undertake all obligations set forth in the Continuing Obligation To Cooperate paragraph, except for the obligations set forth in clause (e).

In addition, it is a condition of this Agreement that the BAWAG Parties abide by the terms of the Stipulation and Order of Settlement entered in the United States Bankruptcy Court, Southern District of New York, in the adversary proceeding captioned *BAWAG P.S.K. v. Refco Inc.*, Case No. 05-60006 (RDD); Adv. Pro. No. 05-03161 (RDD) (the "Stipulation and Order").

Continuing Obligation To Cooperate

It is understood that (subject to any restrictions imposed by Austrian law) the BAWAG Parties: (a) shall truthfully and completely disclose all information with respect to the activities of the BAWAG Parties, their officers and employees, and others concerning all such matters about which this Office inquires, which information can be used for any purpose, except as limited by the third paragraph of this agreement; (b) shall cooperate fully with this Office, the United States Postal Inspection Service ("USPIS"), and the United States Securities and Exchange Commission ("SEC"); (c) shall, at the Office's request, use its best efforts to secure the attendance and truthful statements or testimony of any present or former officer, agent or employee at any meeting or interview or before the grand jury or at any trial or other court proceeding; (d) shall provide to this Office upon request, any document, record, or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires; and (e) shall bring to this Office's attention all criminal conduct by or criminal investigations of the BAWAG Parties or their senior managerial employees which come to the attention of BAWAG's supervisory board or managing board, or the board of the ÖGB, as well as any administrative proceeding or civil action brought by any governmental authority which alleges fraud by or against any of the BAWAG Parties. It is further understood that the BAWAG Parties shall commit no crimes whatsoever. Moreover, any assistance the BAWAG Parties may

provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators. The BAWAG Parties' obligations under this paragraph shall continue until the later of (1) a period of two years from the date of this Agreement or (2) the date upon which all prosecutions arising out of the conduct described in the Indictment are final.

Restitution Obligations

It is understood that BAWAG shall provide for restitution to the victims of the fraud schemes set forth in the Indictment, as set forth more fully below.

1) The BAWAG Parties shall pay to the United States (a) \$337.5 million, pursuant to a schedule set forth below; and (b) if certain conditions set forth below are met, as much as an additional \$100 million. These funds shall thereafter be forfeited to the United States pursuant to a civil forfeiture complaint filed in the United States District Court for the Southern District of New York (the "Forfeited Funds"). The BAWAG Parties agree that they will not file a claim with the Court or otherwise contest this civil forfeiture action and will not assist a third party in asserting any claim to the Forfeited Funds. It is the intent of the parties that the Forfeited Funds will be restored to the victims of the Refco fraud pursuant to 18 U.S.C. § 981(e)(6), under the Petition for Remission and/or Mitigation procedures of the United States Department of Justice or any other manner within the United States Attorney General's discretion. Nothing in this Agreement prohibits the BAWAG Parties from providing assistance to victims of the Refco fraud in seeking restoration of the Forfeited Funds pursuant to 18 U.S.C. § 981(e)(6), under the Petition for Remission and/or Mitigation procedures of the United States Department of Justice or any other manner within the United States Attorney General's discretion. The Office will promptly notify BAWAG of any distribution of the Forfeited Funds to the victims of the Refco fraud. The BAWAG Parties will make these payments as follows:

1. Guaranteed Settlement Amount:

- a. Initial and Deferred Payments. The BAWAG Parties shall (i) within 10 days of the Stipulation and Order becoming a Final Order (the date of the making of the Initial Payment (as defined below) being hereinafter called the "Initial Payment Date"), cause to be irrevocably transferred (subject to Sections 3 and 4(c) hereof) to the United States of America, pursuant to wire instructions to be provided by this Office, the amount of \$75 million in immediately available funds (the "Initial Payment"); and (ii) subject to the Stipulation and Order becoming a Final Order, on the date (the "Deferred Payment Date") that is the earliest to occur of (x) the consummation of a Sale Transaction (as defined below) with a Transaction Value (as defined below) equal to or greater than \$500,000,000, (y) one year from the date of entry of this Stipulation and Order by the Court, and (z) the commencement of (1) an insolvency or similar proceeding in respect of BAWAG by

BAWAG or the BAWAG Parties or (2) an involuntary (including mandatory) insolvency or similar proceeding in respect of BAWAG, other than a proceeding commenced by BAWAG or the BAWAG Parties, that has not been dismissed within 120 days of commencement, cause to be irrevocably transferred (subject to Sections 3(ii) and 4(c) hereof) to the United States of America, pursuant to wire instructions to be provided by this Office, the amount of \$262,500,000, plus accrued interest on said amount (the "Interest Component") from and after the Initial Payment Date to and including the Deferred Payment Date at the rate of 3.5% per annum (the "Deferred Payment"), each on the terms set forth below; provided; however, that the Surety Provider (as defined below) may waive the triggers set forth above in clause (ii)(x), (y), or (z) at any time prior to the Deferred Payment Date by delivering a written notice of such waiver to this Office (the date such notice is received, in form and substance reasonably satisfactory to this Office, the "Waiver Date"), without penalty, and partial payment shall be permitted in increments of at least \$50 million (any such payment for which triggers have been waived, an "Early Payment"); provided, further, that in the event of any such waiver(s), interest shall cease to accrue on any Early Payment(s) as of the applicable Waiver Date, and the United States of America shall transfer to BAWAG any amount of the Deferred Payment attributable to interest on any Early Payment accruing after the applicable Waiver Date promptly upon the United States of America's receipt of the Deferred Payment. Nothing herein shall prevent BAWAG from paying the Deferred Payment in full in cash on the Initial Payment Date, in lieu of posting the Acceptable Surety (as defined below). The Initial Payment together with the Deferred Payment shall comprise the "Guaranteed Settlement Amount."

- b. Matters Concerning Deferred Payment. If the Deferred Payment is not paid in full in cash in accordance with Section 1.a hereof, the Deferred Payment shall be made by and from the assets of the Surety Provider (as defined below), and shall be furnished on or before the Initial Payment Date, payable immediately upon demand on the earlier of the Deferred Payment Date and the Waiver Date, without any reduction, limitation, impairment, termination, defense, offset, counterclaim, or recoupment. If the Deferred Payment is paid in full in cash in accordance with Section 1.a hereof, all references herein to receipt of the Acceptable Surety for the Deferred Payment shall be deemed to include receipt of the Deferred Payment.
- c. Acceptable Surety. "Acceptable Surety" shall mean a "direct pay"

letter of credit or surety bond drawn in favor of the United States of America substantially in the form annexed hereto as Exhibit B to be issued by a United States financial institution (the "Surety Provider") that is unaffiliated with BAWAG, has a credit rating by Standard & Poor's of not lower than "AA," and is otherwise reasonably acceptable to this Office. In all events, the Acceptable Surety shall provide, and BAWAG hereby agrees, that draws on the Acceptable Surety will be paid on the earlier of (x) the Deferred Payment Date and (y) the Waiver Date, and the commencement of an insolvency or similar proceeding in respect of BAWAG shall not be a defense to payment by the Surety Provider. The Acceptable Surety shall be payable solely from the Surety Provider's own funds, and not from any collateral or other property of BAWAG or BAWAG's Affiliates.

2. Contingent Participation Right. The BAWAG Parties intend to seek to sell BAWAG or BAWAG's business or to effect a recapitalization of BAWAG, provided, however, that the determination as to whether to consummate any such transactions shall be within the sole discretion of the BAWAG Parties. If, within two years of the date of entry of this Stipulation and Order by the Court (the "Outside Date"), BAWAG, any of the BAWAG Parties, or any of the Securityholders (as defined below) consummate, or enter into a definitive agreement to consummate, a Sale Transaction (as defined below) that provides for a Transaction Value (as defined below) in excess of €1,800,000,000, or any series of Sale Transactions, whether or not related, that provide for an aggregate Transaction Value in excess of €1,800,000,000, the BAWAG Parties shall pay to the United States of America, an amount (the "Contingent Payment") equal to 15% of the amount by which the Transaction Value of such Sale Transaction or Sale Transactions exceeds €1,800,000,000; provided, however, that the Contingent Payment shall not exceed \$100,000,000. The Contingent Payment(s) payable under this Section 2 shall be paid contemporaneously with the consummation of the Sale Transaction or Sale Transactions that give rise to the obligation to make such Contingent Payment. For currency conversion purposes, all amounts paid shall be converted into U.S. dollars on the date such payment is made; provided, however, that any consideration payable in installments shall be deemed to have been paid in a single payment at the consummation of the Sale Transaction. In the event that any of the consideration is represented by payments that are contingent upon the happening of any event other than the passage of time then such payments shall be paid to the United States of America if and when received by the BAWAG Parties. The Contingent Payment shall be paid in cash, except that if the consideration received in the Sale Transaction consists of non-cash components, and there is an insufficient amount of cash components to satisfy the Contingent Payment, BAWAG shall be permitted to pay the Contingent Payment in the same form of non-cash components; provided, however, that the relative proportion of cash and non-cash components of the Contingent Payment shall be the same, or shall have a greater proportion of cash, as compared with the

cash and non-cash components of the consideration paid in the Sale Transaction.

For purposes of this Agreement:

- a. The term "Sale Transaction" means, from and after the date of filing of the counterclaim by the Official Committee of Unsecured Creditors in the Refco Bankruptcy Action (the "Counterclaim"), (i) any merger, consolidation, amalgamation or other similar transaction or series of transactions involving BAWAG or any of its subsidiaries; (ii) any Transfer (as defined below) or issuance, directly or indirectly, in a single transaction or any series of transactions, whether or not related, of the shares of capital stock of BAWAG or Rights (as defined below) representing, in the aggregate, more than 50% of the outstanding voting power or entitlement to distributions, income, or other economic rights of BAWAG (including any Transfer of any entity (or of control of any entity) that is a Securityholder (as defined below)); (iii) any Transfer in a single transaction or series of transactions, whether or not related, of a majority of the assets of BAWAG and its subsidiaries on a consolidated basis (including deposit accounts); (iv) any recapitalization or restructuring of the capital stock of BAWAG in which Securityholders receive cash, securities (other than Qualified Equity Securities (as defined below)) or other assets; (v) any dividend (other than a dividend payable solely in Qualified Equity Securities of BAWAG), distribution, profit participation, return of capital, redemption or repurchase of shares of capital stock of BAWAG; (vi) any issuance by BAWAG of shares of capital stock or other securities, or profit participation, representing more than a majority of the voting power or entitlement to distributions, income or other economic rights of BAWAG; and (vii) any other similar transaction in which the Securityholders receive any consideration or other value relating, directly or indirectly, to their shares of capital stock in BAWAG.

Notwithstanding the foregoing, a Sale Transaction shall not include (i) any transaction that is solely between or among BAWAG and/or any of its direct and indirect wholly-owned subsidiaries; (ii) any sale of assets that served as collateral for indebtedness of unrelated third parties to BAWAG or its subsidiaries that was received by BAWAG or its subsidiaries upon foreclosure of such assets or otherwise in connection with an event of default under such indebtedness; provided that (x) such indebtedness was extended by BAWAG or its subsidiaries in the ordinary course of its business, and (y) the proceeds received upon such sale were applied to reduce the indebtedness of such third party; (iii) a transaction under clause (iv) or (v) of the definition of Sale Transaction if (x) the

aggregate amount of cash or the aggregate fair market value of any securities or other assets received by Securityholders in any such transaction or transactions after the date of the Counterclaim is less than €250,000,000, (y) such transaction is not related to, or done in contemplation of any other Sale Transaction, and (z) such transaction occurs prior to the first occurrence of any Sale Transaction; (iv) any infusion necessary to comply with the requirements for supplementary capital within the meaning of Section 23 of the Austrian Banking Act in the form of non-convertible subordinated debt which is either replacing existing supplementary capital or which is incremental capital not in excess of €250,000,000 ("Supplementary Capital") and (v) any credit to Tier 1 capital ("Tier 1 Capital") which BAWAG may receive through the establishment of one or more special purpose vehicles (each, an "SPV") by BAWAG as part of a consortium with other banks or insurance companies, in which BAWAG is the controlling person; it being understood, however, (w) that the Supplementary Capital and Tier 1 Capital shall not afford any voting rights or participation in profits in BAWAG or any BAWAG subsidiary, other than an SPV, to BAWAG, any BAWAG subsidiary or any third party, (x) no party shall have any preferential rights to receive distributions out of such special purpose vehicle, provided, that after January 1, 2008, any investors in an SPV shall be entitled to receive preferential distributions from earnings on the investments made by such SPV, (y) the assets of such special purpose vehicle shall be invested solely in Eurobonds or other similarly fixed income securities not issued by any participant in such transaction and (z) the Supplementary Capital and Tier 1 Capital shall not be excluded from the definition of a Sale Transaction, if any entity providing Supplementary Capital or Tier 1 Capital is also engaging in any other Sale Transaction in connection therewith (an SPV meeting all such requirements being referred to herein as a "Qualifying SPV"); and (vi) the return of capital to any investor in an SPV upon dissolution or liquidation thereof.

- b. For purposes of this Section 2, if the BAWAG Parties issue any securities, rights, options or other similar instruments that are convertible into or exchangeable for shares of capital stock of BAWAG ("Rights"), then (i) the shares of capital stock issuable upon conversion, exchange or exercise of the Rights shall be deemed to have been issued at the time of the issuance of the Rights, regardless of whether such Rights are immediately exercisable or exercisable only upon the happening of certain events or the passage of time, and (ii) the consideration for such issuance shall be deemed to be the aggregate consideration paid for

such Rights plus any additional amounts payable upon conversion, exchange or exercise of the Rights; provided, that in the event such Rights are convertible debt securities that were issued after the date of filing of the Counterclaim to and held by any BAWAG Party and are paid in accordance with their terms prior to the occurrence of any Sale Transaction, then such Rights shall not be deemed to have been issued.

- c. The term "Qualified Equity Securities" means ordinary shares of BAWAG, or any other shares of capital stock of BAWAG that (i) ranks *pari passu* as to distributions of dividends and rights upon liquidation with the ordinary shares; (ii) votes generally as a class with the ordinary shares; (iii) does not have any other voting rights other than as set forth in clause (ii) above; (iv) is not redeemable, either mandatorily, at the option of the company or at the option of the holder, or required to be repurchased, in any such case, whether immediately, after the passage of time, or upon the occurrence or non-occurrence of any event; and (v) is not convertible into or exchangeable for any other securities (other than Qualified Equity Securities) either mandatorily, at the option of the company or at the option of the holder, or required to be repurchased, in any such case, whether immediately, after the passage of time, or upon the occurrence or non-occurrence of any event.
- d. The term "Securityholder" means any (i) BAWAG Shareholder (defined in Schedule 2 to this Agreement) and (ii) any other holder of any shares of capital stock or subordinated debt securities of BAWAG or of any options, rights, warrants, convertible or exchangeable securities or other similar rights entitling such person to acquire any capital stock or subordinated debt securities of BAWAG, whether or not currently exercisable.
- e. The term "Transfer" means any direct or indirect transfer, sale, assignment, lease or license of any securities or assets, any grant of the right to receive the economic benefits of any securities or assets, any satisfaction or discharge of debts, or any similar transaction.
- f. Transaction Value. The amount received or deemed to be received in any Sale Transaction shall equal, in each case as applicable, the sum, without duplication, of (i) the aggregate amount of cash, and the aggregate fair market value of any securities or assets other than cash, received by Securityholders or the BAWAG Parties, as the case may be, and any other elements of value received by any Securityholder or the BAWAG Parties, directly or indirectly, arising out of or relating to any Sale Transaction; (ii) the aggregate fair market value of capital stock or other securities of

BAWAG retained by Securityholders after such transaction, which shall be calculated as if 100% of BAWAG or its assets or businesses had been sold by dividing: (x) the total proceeds and other consideration received or receivable by Securityholders or the BAWAG Parties in connection with a Sale Transaction, by (y) the percentage of assets or ownership which is sold in connection with such Sale Transaction; (iii) all amounts paid pursuant to clause (iv) or (v) of the definition of Sale Transaction after the date of filing of the Counterclaim to the date of consummation of the Sale Transaction regardless of whether payment of such amounts resulted in a Sale Transaction; (iv) the amount by which any liabilities of any Securityholder are forgiven, eliminated, reduced, or deferred beyond their current maturity in connection with, or related, directly or indirectly, to, any Sale Transaction (including, (x) in the case of any amendment or modification of any such liabilities, the difference between such liability prior to the amendment or modification and the fair market value of such liability after such amendment or modification and (y) in the case of any credit bid or similar transaction with respect to securities of BAWAG or assets of the BAWAG Parties, the principal amount of and accrued interest on the debt being used in the credit bid); (v) indebtedness, other than Supplementary Capital, raised after the date of the commencement of the Counterclaim, Tier 1 Capital credited after the date of the commencement of the Counterclaim as a result of the establishment of a Qualifying SPV, deposit obligations, the posting of Acceptable Surety and covered bonds, of BAWAG and its subsidiaries that are assumed by any other person in connection with the Sale Transaction; and (vi) any net increase in indebtedness, other than Supplementary Capital raised after the date of the commencement of the Counterclaim, Tier 1 Capital credited after the date of the commencement of the Counterclaim as a result of the establishment of a Qualifying SPV, deposit obligations, the posting of Acceptable Surety, and covered bonds, of the BAWAG Parties after the date of commencement of the Counterclaim to the date of consummation of the Sale Transaction (any such amount, the "Transaction Value").

- g. Computation of Transaction Value. The Transaction Value shall be computed according to the terms of Section 2.g of the Stipulation and Order.
- h. Insider Transactions. Sale Transactions involving an Insider shall be subject to the terms of Section 2.h of the Stipulation and Order.
- I. Monitor. The Sale Transaction(s) shall be monitored as provided in Section 2.i of the Stipulation and Order.

Additional Obligations

It is understood that, should the BAWAG Parties commit any crimes subsequent to the date of signing of this Agreement, or should it be determined that any of the BAWAG Parties has given false, incomplete, or misleading testimony or information, including false, incomplete, or misleading information regarding their financial condition, or should any of the BAWAG Parties otherwise violate any provision of this Agreement, all of the BAWAG Parties shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including perjury and obstruction of justice. The running of the statute of limitations with respect to any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement shall be tolled from the date hereof until the aforementioned period of cooperation has expired. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any such prosecution that is not time-barred on the date that this Agreement is signed, to the extent set forth above.

It is understood that if it is determined that any of the BAWAG Parties has committed any crime after signing this Agreement or has given false, incomplete, or misleading testimony or information, or has otherwise violated any provision of this Agreement, (a) all statements made by any of the BAWAG Parties to this Office, the SEC, or other designated law enforcement agents, and any testimony given by any then current officer, agent or employee of any of the BAWAG Parties before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against any of the BAWAG Parties; and (b) none of the BAWAG Parties shall assert any claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

It is further understood that this Agreement does not bind any federal, state or local prosecuting authority other than this Office. This Office will, however, bring the cooperation and remedial actions of the BAWAG Parties to the attention of other prosecuting offices, if requested by any of the BAWAG Parties.

This Agreement may be executed in one or more counterparts and by facsimile, all of which shall be considered effective as an original signature.

With respect to this matter, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and the BAWAG Parties. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

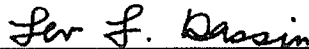
Very truly yours,

MICHAEL J. GARCIA
United States Attorney

By: 

David C. Esseks
Marcia Isaacson
Assistant United States Attorneys
(212) 637-2328/2211

APPROVED:



Lev L. Dassin
Chief, Criminal Division

AGREED AND CONSENTED TO:

Ewald Nowotny
Pursuant to Authority Conveyed
By Resolution of the Supervisory Board of
of BAWAG P.S.K.

DATE

Rudolf Hundstorfer, Präsident
Pursuant to Authority Conveyed by
Resolution of the Supervisory Board of
Österreichischer Gewerkschaftsbund

DATE

With respect to this matter, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and the BAWAG Parties. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Very truly yours,

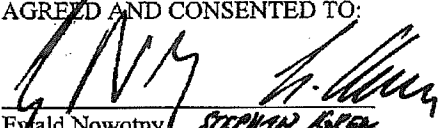
MICHAEL J. GARCIA
United States Attorney

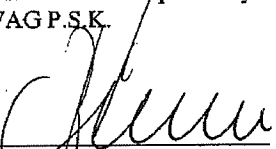
By: _____
David C. Esseks
Marcia Isaacson
Assistant United States Attorneys
(212) 637-2328/2211

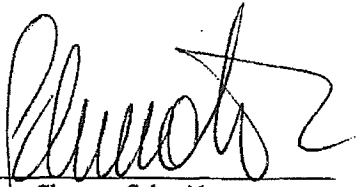
APPROVED:

Lev L. Dassin
Chief, Criminal Division

AGREED AND CONSENTED TO:



Ewald Nowotny *STEPHAN KLEIN* June 2, 2006
DATE
Pursuant to Authority Conveyed
By Resolution of the Supervisory Board of
of BAWAG P.S.K.


Rudolf Haudstorfer, Präsident June 2, 2006
DATE
Pursuant to Authority Conveyed by
Resolution of the Supervisory Board of
Österreichischer Gewerkschaftsbund



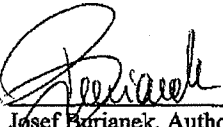
Mag. Clemens Schneider,
Leitender Sekretär
Pursuant to Authority Conveyed by
Resolution of the Supervisory Board of
Österreichischer Gewerkschaftsbund

June 2, 2006
DATE



Erich Foglar, Managing Director
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
ÖGB Vermögensverwaltungsgesellschaft m.b.H

June 2, 2006
DATE




Josef Burianek, Authorized Signatory
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
ÖGB Vermögensverwaltungsgesellschaft m.b.H

June 2, 2006
DATE


Dr. Günther Rakuscha,
Authorized Signatory
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
ÖGB Vermögensverwaltungsgesellschaft m.b.H

DATE



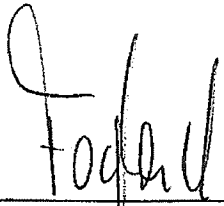
Mag. Clemens Schneider,
Managing Director
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
Anteilsverwaltung BAWAG P.S.K. AG

June 2, 2006
DATE



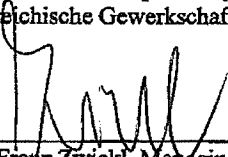
Heinz Gehl, Managing Director
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
Anteilsverwaltung BAWAG P.S.K. AG

June 2, 2006
DATE



Erich Foglar, Chief Executive Officer
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
Österreichische Gewerkschaftliche Solidarität Privatstiftung

June 2, 2006
DATE



Mag. Franz Zwickl, Managing Director
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
Österreichische Gewerkschaftliche Solidarität Privatstiftung

June 2, 2006
DATE



Eleonora Hostasch, Managing Director
Pursuant to Authority Conveyed By
Resolution of the Supervisory Board of
Österreichische Gewerkschaftliche Solidarität Privatstiftung

June 2, 2006
DATE

APPROVED:



Andrew Levander, Esq.
Attorney for BAWAG P.S.K.

June 2, 2006
DATE

Schedule 1 to BAWAG Non-Prosecution Agreement Dated May __, 2006

“Ingebe” Industrie- u. Gewerbe-Beteiligungsgesellschaft m.b.H.

Austinvest Anstalt

AI-ALTERNATIVE INVESTMENTS LTD.

Alinea Privatstiftung

Alinea Holding GmbH

ALPHARENT s.r.o.

Athena Wien Beteiligungen AG

AUST-INGEBE Beteiligungsverwaltung GmbH.

AUSTFINANZVERWALTUNG S.A.

AUSTOST ANSTALT

AUSTOST HANDELS UND TREUHAND LIMITED

AUSTOST HANDELS- UND TREUHANDGESELLSCHAFT M.B.H.

B.I.S. BAWAG Internet Services GmbH

B.L.H. BAWAG Leasing Holding GmbH

BAWAG Allianz Mitarbeitervorsorgekasse AG

BAWAG Bank CZ a.s.

BAWAG banka d.d.

BAWAG Beteiligungsmanagement GmbH

BAWAG CAPITAL FINANCE (JERSEY) II LIMITED

BAWAG CAPITAL FINANCE (JERSEY) III LIMITED

BAWAG CAPITAL FINANCE (JERSEY) LIMITED

BAWAG FINANCE HOLDING LIMITED

BAWAG Finance Malta Ltd.

BAWAG Finanzanalyse GmbH

BAWAG INTERNATIONAL FINANCE LIMITED

BAWAG Invest Consult GmbH

BAWAG Leasing & Fleet Kft

BAWAG Leasing & fleet s.r.o.

BAWAG Leasing & Fleet Sp. z o.o.

BAWAG Leasing Rt.

BAWAG Malta Bank Limited

BAWAG P.S.K. Datendienst Gesellschaft m.b.H.

BAWAG P.S.K. Fuhrparkleasing GmbH

BAWAG P.S.K. IMMOBILIEN AG

BAWAG P.S.K. IMMOBILIENLEASING GmbH

BAWAG P.S.K. Kommerzleasing GmbH

BAWAG P.S.K. LEASING GmbH

BAWAG P.S.K. LEASING GmbH & Co. Hochholzerhof Errichtungs- und

BAWAG P.S.K. LEASING GmbH & Co. MOBILIENLEASING KG.

BAWAG P.S.K. MOBILIENLEASING GmbH

BAWAG P.S.K. Vermietungs- und Leasing GmbH

BAWAG Wohnbaubank Aktiengesellschaft

BAWAG Wohnbauholding GmbH

BETARENT s.r.o.

bezahlen.at Internet-Service GmbH

Bodensee Limited

BPI Holding GmbH

BPI Holding GmbH & Co KEG.

BPI Holding GmbH & Co. Betriebsanlagenverwaltungs KG.

BPI Holding GmbH & Co. Immobilien und Anlagen KG.

BSH BAWAG Strategie Holding GmbH

Celeste Trust reg.

C. & P. Leasing-Gesellschaft m.b.H.

Cafe Bawag Betriebsgesellschaft m.b.H.

CARNI Industrie-Immobilien-Gesellschaft m.b.H.

Schedule 1 to BAWAG Non-Prosecution Agreement Dated May __, 2006

Cromer Capital Management Ltd.
CROMER FINANCE LTD.
Cromer International Limited
E-C-B Beteiligungsgesellschaft m.b.H.
easybank AG
Einlagensicherung der Banken und Bankiers Gesellschaft m.b.H.
EURO RAIL INVEST LIMITED
FC Leasing GmbH
FCH alpha Finanzierungsvermittlung GmbH
FCH beta Finanzierungsvermittlung GmbH
FFE Finanzierungsvermittlungsgesellschaft m.b.H. in Liqu.
FinHaus s.r.o.
Gara Feuerwehrzentralen Leasing Gesellschaft m.b.H.
Gara Holding GmbH
Gara RPK Grundstücksverwaltungsgesellschaft m.b.H.
Genossenschaftsküche der bei der Österreichischen Postsparkasse täl
Hafner See-Liegenschaftsverwaltungsgesellschaft m.b.H.
HBV Holding und Beteiligungsverwaltung GmbH
HFE alpha Handels-GmbH
IDG Immobilien Development Gesellschaft m.b.H.
IDG Immobilien Development Gesellschaft m.b.H. & Co KG
Ingebe beta Immobilienholding GmbH
Ingebe COR Finanzierungsberatung GmbH in Liqu.
Ingebe Immobilienhandels- und Vermittlungs-GmbH.
Ingebe Medien Holding GmbH
ISTRO - RECOVERY, s.r.o.
ISTRO ASSET MANAGEMENT, sprá. spol., a.s.
Istrobanka a.s.
ISTROFINANCE, s.r.o.
ISTROLEASING, s.r.o.
ISTRORENT, s.r.o.
Kinomax spółka z ograniczona odpowiedzialnoscia
KLB Baulandentwicklung GmbH
Kommunalleasing GmbH
Kongresshotel Linz Betriebsgesellschaft m.b.H.
Kongresshotel Linz Errichtungsgesellschaft m.b.H.
L. Bösendorfer Klavierfabrik GmbH
M. Sittikus Str. 10 Errichtungs GmbH.
MAP Handels GmbH
MARVE Immobilienentwicklungsgesellschaft m.b.H.
MFT + RA, s.r.o.
Monte Brook Corporate Assets Ltd.
Oberosterer - Beteiligungsgesellschaft m.b.H.
OMNITEC Informationstechnologie-Systemservice GmbH
P.S.K. Beteiligungsverwaltung GmbH
P.S.K. Handel und Vermietung GmbH.
P.S.K. IMMOBILIENLEASING GmbH
P.S.K. Liegenschaften Vermietungs- und Vermietungs- und Verwaltungsgesellschaft m.b.
P.S.K. Versicherungs- und Finanzservice GmbH
P.S.K. Zahlungsverkehrsabwicklungs GmbH
P.S.K. Versicherung AG
PLATO Grundstücksverwertung GmbH
Pluto Beteiligungsverwaltung GmbH
POLESTAR LIMITED
PT Immobilienleasing GmbH

Schedule 1 to BAWAG Non-Prosecution Agreement Dated May 2, 2006

PULAWSKA Planungs- und Errichtungsges.m.b.H.
R & B Leasinggesellschaft m.b.H.
RAIL TRANS INVEST LIMITED
Realplan Beta Liegenschaftsverwaltung Gesellschaft m.b.H.
RF 17 BAWAG Immobilienleasing GmbH
RF 2 BPI Holding GmbH & Co. KG.
RF 4 BAWAG P.S.K. LEASING GmbH & Co. OHG.
RF BAWAG Leasing Gesellschaft m.b.H.
RF elf Realitätenverwertungsgesellschaft m.b.H.
RF fünfzehn BAWAG Mobilien-Leasing Gesellschaft m.b.H.
RF neun BAWAG P.S.K. LEASING GmbH & Co. KG.
RF sechs BAWAG P.S.K. LEASING GmbH & Co. KG.
RF zehn BPI Holding GmbH & Co KG.
RF zwölf BAWAG Leasing Gesellschaft m.b.H.
Rhein Limited
RVG Immobilienholding GmbH
RVG, Realitätenverwertungsgesellschaft m.b.H.
SPARDA Bank Aktiengesellschaft
START Immobilienleasing GmbH
Stiefelkönig d.o.o.
Stiefelkönig Schuhhandels Gesellschaft m.b.H.
Stiefelkönig spol. s.r.o.
Stiefelkönig trgovinas cevli d.o.o.
STK Beteiligung GmbH
TADEMA Leasing und Beteiligung Gesellschaft m.b.H.
UHW Finanzierungsdienstleistungen beta GmbH
uni venture Beteiligungs AG
ÖKK Holding Gesellschaft m.b.H.
Österreichische Verkehrskreditbank AG
Bank Frick & Co Aktiengesellschaft
Bond Classic Ltd.
CAP Holding AG
CDC City Investments Ltd.
Conservative Properties Ltd.

Schedule 2 To BAWAG Non-Prosecution Agreement Dated May __, 2006

ÖGB AFFILIATES

Österreichischer Gewerkschaftsbund

ÖGB Vermögensverwaltungsgesellschaft m.b.H.

Anteilsverwaltung BAWAG P.S.K. AG

Österreichische Gewerkschaftliche Solidarität Privatstiftung

Exhibit A To BAWAG Non-Prosecution Agreement

Solely for use in any criminal proceeding brought by the United States, Bank Für Arbeit Und Wirtschaft Und Österreichische Postsparkasse Aktiengesellschaft (the "Bank") and its successors in interest, if any, and Österreichische Gewerkschaftsbund ("ÖGB") will not contest the admissibility of the following statement:

1. From at least 2000 through at least year-end 2005, the Bank was the fourth largest bank in Austria, and as of the date hereof, is wholly owned, indirectly, by ÖGB, the Austrian Trade Union Association.

The Bank's Investment In Refco And Assistance In Hiding Bennett's Debt To Refco

2. From in or about 1999 through 2003, the Bank made direct and indirect equity investments and loans to Refco Group Limited, LLC ("RGL"), the holding company for Refco, a privately-held New York-based commodities brokerage with which the Bank also did substantial trading business. In 1999, the Bank, indirectly through a Delaware holding corporation, paid approximately \$95 million for a 10% ownership interest in RGL. The balance of RGL was owned by Refco Group Holdings, Inc. ("RGHI"). The Bank's senior officers understood that Phillip R. Bennett, the President and Chief Executive Officer of Refco, had a substantial ownership interest in RGHI. Also in 1999, the Bank made a subordinated loan of \$85 million indirectly to RGL, and was entitled to receive interest and indirectly approximately 10% of RGL's net income.

3. As of in or about 2000, certain former senior officers of the Bank, including the then-Chairman of the Bank and a member of the Managing Board who would succeed to the Chairmanship of the Bank in or around 2003, knew that Bennett and/or RGHI wanted to manipulate certain intercompany balances. In fact, Bennett was secretly hiding amounts RGHI owed to Refco.

4. In or about the fiscal year-end for Refco, beginning in 2000 and concluding in February 2005, with the approval and authorization of the Chairman of the Bank in each year, and in years 2000 through 2002, with the approval of both individuals identified in paragraph 3 above, the Bank made short-term loans of hundreds of millions of dollars to RGHI so that RGHI could manipulate certain intercompany accounts in order deceptively to "improve" Refco's balance sheet. In particular, the Bank made short-term loans to RGHI spanning Refco's financial statement year-end, in the following amounts in the following years:

<u>February Year-End</u>	<u>Loan Amount</u>
2000	\$300 million
2001	\$300 million
2002	\$300 million
2003	\$250 million
2004	\$250 million
2005	\$250 million

These loans were secured in substantial part by temporary deposits by Refco Capital Markets at the Bank.

6. In 2002, certain former senior officers of the Bank, including the then-Chairman of the Bank's Supervisory Board and Managing Secretary of the ÖGB, used a second Delaware corporation ("Corporation 1") to enter into a proceeds participation agreement ("PPA") with RGL. Under the PPA, Corporation 1, which was indirectly owned through a Liechtenstein-based foundation by the ÖGB, would be entitled to a share of the proceeds of any sale of RGL in stated proportions linked to the total amount of its investment in RGL. Under the PPA, Corporation 1 made two contributions to RGL. One of these contributions was made using the proceeds of a loan from the Bank of approximately \$220 million. The other contribution to RGL was made by Corporation 1. As of year-end 2003, Corporation 1 had purchased, for a total of approximately \$475 million, the right to share in approximately 27.2% of the proceeds of a sale of RGL.

7. In or about August 2004, Thomas H. Lee Partners purchased 57% of Refco in a leveraged buyout transaction. All participants in that leveraged buyout transaction (including Thomas H. Lee Partners; the purchasers of \$600 million in bonds sold by Refco; and the banks that lent Refco \$800 million as part of the transaction) relied on Refco's financial statements, which did not disclose the existence of Bennett's related party debt to Refco.

8. Upon closing of the transaction described in paragraph 7, the Bank received, directly or indirectly, a total of approximately \$952 million. These payments included repayment of various loans made directly and indirectly to Refco and Corporation 1 by the Bank and payments to Corporation 1.

9. On or about August 10, 2005, in reliance on, among other things, Refco's public filings and the accompanying audited financial statements, the public bought approximately \$583 million of Refco's common stock.

Bennett's Assistance To The Bank In Hiding The Bank's Investment Losses

10. In or about 2000, the Bank, through the purchase of certain bonds, entrusted approximately €350 million to a company controlled by ██████████ to finance ██████████'s trading investments, with the Bank entitled to a portion of any gain on such trading. By December 2000, ██████████ reported to the Bank's Managing Board, including the individuals referred to in paragraph 3 above, that he had lost substantially all of the €350 million. In order to disguise this loss on its balance sheet, the former Managing Board directed that the bonds representing the now worthless obligations of ██████████'s company to the Bank ("Impaired Assets") be sold via a set of circular transactions to an investment fund that would be owned by the Bank. The fund would then be carried on the Bank's books at the original asset value, and would appear to be a legitimate and liquid investment. The Bank also obtained a guarantee of the Impaired Assets from the President of the ÖGB, backed in part with the assets of the ÖGB's strike fund.

11. At the end of December 2000, the Bank sold the bonds representing the Impaired Assets, through Refco, to the Liquid Opportunities-Plus Fund Ltd., a British Virgin Islands mutual fund. The Bank received \$338.5 (€364) million for these bonds. Simultaneously, the

Bank invested \$338.5 million in the Liquid Opportunities-Plus Fund Ltd., becoming its principal owner. In particular, on or about December 28, 2000, the Bank wired \$338.5 million via intermediary banks to a Liquid Opportunities-Plus Fund Ltd. account at Refco in New York to pay for the Bank's ownership interest in the Liquid Opportunities fund. The same day, Liquid Opportunities-Plus Fund Ltd. wired \$338.5 million to the Bank to pay for the bonds purchased from the Bank. The Bank's \$338.5 million paid for both its interest in the Liquid Opportunities fund and that fund's purchase of the bonds from the Bank. The bonds sold to the Liquid Opportunities-Plus Fund, Ltd. were named York Capital Limited, Fordham Capital Limited, Columbia Capital Limited, Huntington Capital Limited, Pace Capital Limited, West End Capital Holdings, Ltd, and Madison Capital Limited (the "Bonds").

12. Liquid Opportunities-Plus Fund, Ltd. was managed by SIAM Capital Management, of Orlando, Florida. SIAM Capital Management was responsible for the "independent" pricing of the Liquid Opportunities-Plus Fund, Ltd. and the Bonds. At various times between 2001 and 2004, shares of Liquid Opportunities-Plus Fund, Ltd. were listed on the Bermuda and Irish Stock Exchanges.

13. During the period from the end of 2000 through in or about November 2004, the Bank held substantially all of the shares of Liquid Opportunities-Plus Fund, Ltd. (for most of that time in an account at Refco), and the Liquid Opportunities-Plus Fund, Ltd. held the Bonds in its account at Refco. In or about November 2001, shares of "CAP" stock were purchased by the Liquid Opportunities-Plus Fund, Ltd. account at Refco for no value. The CAP stock represented an investment made indirectly by the Bank in a casino that, as of in or about 2004, had ceased all business operations. At November 2001 month end, the Liquid Opportunities-Plus Fund, Ltd. account at Refco was valued at €470 million. During this entire period, the Bonds were carried in the Refco accounts at or close to par, with a total value of approximately €350 million. Also, beginning in or about March 2002, the Liquid Opportunities-Plus Fund, Ltd. shares held by the Bank at Refco, which were purportedly valued based on the value of the Bonds and CAP stock held by Liquid Opportunities-Plus Fund, Ltd., were carried at a total value of between approximately €494 million and €514 million.

14. From in or about November 2001 through August 2005, the Bank held approximately 49,416,269 shares of the Liquid Opportunities-Plus Fund, Ltd. in its account at Refco. In or about November 2004, the Bank restructured the manner in which it held the Bonds and the CAP stock. In particular, the Bank caused the Bonds and the CAP stock to be transferred from the Liquid Opportunities-Plus Fund, Ltd. account at Refco to accounts in the name of seven Anguillan companies, of which the Bank was the beneficial owner. These companies were Bettio Asset Investment, Tuvalu Holding Company, Chaco City Investments, Monte Brook Corp, Catamarca Assets, Tecka Asset Holdings and Rabaul Holdings. After the restructuring, the Bank's holdings of the Bonds and the CAP stock were valued at approximately €370 million, plus approximately €85 million in accrued interest. The shares of the seven Anguillan companies were carried on the Bank's account at Refco and valued at approximately €513 million.

Dated: May __, 2006