



*United States Attorney
Southern District of New York*

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**AUSTRIAN BANK "BAWAG" TO PAY \$337.5 MILLION
FOR RESTITUTION TO VICTIMS OF REFCO FRAUD**

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, announced today that BAWAG P.S.K., formally known as Bank Für Arbeit Und Wirtschaft Und Österreichische Postsparkasse Aktiengesellschaft, and the Austrian Trade Unions Association, formally known as Österreichischer Gewerkschaftsbund (ÖGB), which owns BAWAG, have agreed to forfeit \$337.5 million to the United States, and that money will be distributed to victims of the fraud at Refco, Inc., as part of an agreement that the Government will not prosecute BAWAG or the ÖGB.

BAWAG and the ÖGB will forfeit these funds in connection with this Office's agreement not to prosecute the Bank or the ÖGB for their role in assisting Phillip R. Bennett, the former Chief Executive and Chairman of Refco, Inc., in his scheme to hide from Refco's investors Bennett's debt of hundreds of millions of dollars to Refco. When that scheme was revealed in October 2005, Refco's stock price plummeted, causing enormous investor losses as the crisis drove Refco into bankruptcy. The Government's non-prosecution agreement with BAWAG and the ÖGB is part of a joint settlement that includes claims brought by the Refco bankruptcy estate against BAWAG arising from its involvement with the fraud at Refco. In total, BAWAG and the ÖGB will pay at least \$675 million in connection with the non-prosecution agreement and to settle the bankruptcy estate claims against them. The Government will distribute half of the \$337.5 million in forfeited funds to the Refco bankruptcy estate, and half to other victims of the Refco fraud.

According to the Indictment filed against Bennett, Refco was a large, Manhattan-based financial services company that offered securities, derivatives and commodities brokerage services to investors. Refco conducted an initial public offering of its stock on August 16, 2005, raising approximately \$583 million from the public. Refco's stock was listed on the New York Stock Exchange.

On October 10, 2005, Refco issued a press release announcing, in substance, that it had discovered that it was owed a debt of approximately \$430 million by an entity controlled by Bennett. Following release of this information, the market price of Refco stock plummeted from approximately \$28.56 per share, its closing price on Friday, October 7, 2005, to \$13.85, its closing price on October 11, 2005; Refco's stock was subsequently delisted by the New York Stock Exchange. Refco, Inc. filed a petition in bankruptcy on October 17, 2005.

According to allegations in the Bennett Indictment and a statement acknowledged by BAWAG and the ÖGB as part of the non-prosecution agreement, BAWAG assisted Bennett in hiding hundreds of millions of dollars of losses at Refco from Refco's investors and creditors. In the late 1990s, certain Refco customers sustained losses in positions financed by Refco, and when the customers were unable to pay Refco for the losses, Refco assumed the obligations. In order to hide these losses, Bennett transferred them to his holding company, Refco Group Holdings, Inc. From at least 2000 through 2005, Bennett sought to hide this huge unpaid debt by his holding company to Refco from Refco's investors by temporarily transferring the debt from RGHI to other entities for brief periods spanning Refco's fiscal year-end reporting period.

According to the statement by BAWAG and the ÖGB in connection with the non-prosecution agreement, BAWAG assisted Bennett in these year-end cover-up transactions every year from 2000 through 2005, loaning Bennett between \$250 million and \$300 million each year in an effort to assist Bennett in manipulating Refco's balance sheet and hiding the true financial health of Refco from its investors. At various times between 2000 and 2004, BAWAG beneficially owned as much as 47% of Refco, directly or indirectly, and BAWAG received \$952 million from the proceeds of the August 2004 leveraged buyout of Refco by Thomas H. Lee Partners.

According to the statement by BAWAG and the ÖGB in connection with today's non-prosecution agreement, BAWAG sought and received assistance from Bennett at Refco in concealing BAWAG's own investment losses on its balance sheet. In 2000, according to the statement, BAWAG lost approximately €350 million and, rather than recognize the loss on its balance sheet, sought Refco's help in hiding the loss by holding worthless assets in an account in Refco that valued the assets at as much as €513 million.

Under the terms of the non-prosecution agreement, this Office will not prosecute BAWAG or the ÖGB for any crimes arising from BAWAG's assistance to Bennett in defrauding investors and creditors

of Refco. BAWAG and the ÖGB have committed under the agreement to continue to cooperate with the criminal investigation of the Refco fraud.

The decision to enter into the non-prosecution agreement was based on, among other things, the following factors: BAWAG's full cooperation with this Office's investigation; the commitment by BAWAG and the ÖGB to continue that cooperation in the future; BAWAG's and the ÖGB's commitment to pay substantial restitution to the victims of the Refco fraud harmed by their conduct; BAWAG's and the ÖGB's agreement to settle related claims brought by the Refco bankruptcy estate, providing further restitution to victims of the Refco fraud; and the potential harm to BAWAG's depositors and innocent employees that would likely result from a criminal prosecution. After new management took over control of BAWAG's affairs in January 2006, the Bank took steps to investigate its involvement with the Refco fraud and disclosed to the public in Austria the deficiencies in its own balance sheet that prior management and the ÖGB had been hiding for years; these steps by the Bank were relevant to this Office's decision not to prosecute BAWAG for its conduct in the Refco fraud. In view of these factors, Mr. GARCIA stated that a criminal prosecution of BAWAG and the ÖGB is not necessary to serve the public interest.

Mr. GARCIA stated: "Today's announcement marks an important step for the victim-investors of Refco, and again confirms the Government's commitment to seeking restitution and compensation for the victims of financial frauds. This Office will vigorously pursue those who aid and abet their business associates in committing financial crimes and defrauding American investors, even those who act entirely from abroad."

Mr. GARCIA, a member of the President's Corporate Fraud Task Force, praised the efforts of the United States Postal Inspection Service and the Criminal Investigators of the United States Attorney's Office, and thanked the Securities and Exchange Commission and the Commodity Futures Trading Commission for their assistance in the investigation of the Refco fraud. He also thanked the Official Committee of Unsecured Creditors of Refco, Inc., for its efforts in creating the joint settlement with BAWAG. Mr. GARCIA said the investigation is continuing.

Assistant United States Attorneys DAVID ESSEKS and MARCIA ISAACSON are in charge of the investigation regarding the fraud at Refco.

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