

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

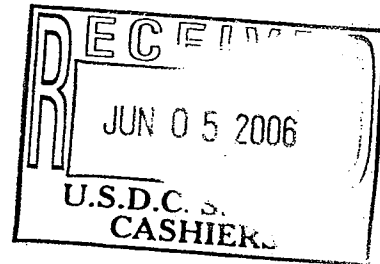
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BAWAG P.S.K. BANK FÜR ARBEIT UND
WIRTSCHAFT UND ÖSTERREICHISCHE
POSTSPARKASSE AKTIENGESELLSCHAFT,

Defendant.



Civil Action No. ()
06 Civ.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. From at least February 2000 into 2005, Bank für Arbeit und Wirtschaft ("BAWAG"), a major Austrian bank, engaged in a series of fiscal year-end transactions with Refco Group Ltd. ("Refco") and Refco Group Holdings, Inc. (a non-Refco entity controlled by Refco's Chief Executive Officer) designed to conceal the real condition of Refco's balance sheet. In fact, Refco and its Chief Executive Officer sought to hide hundreds of millions of dollars worth of related party receivables that otherwise would have appeared on Refco's books.

2. While engaged in those transactions, BAWAG had an ownership interest in Refco and was also an indirect beneficiary of an arrangement between Refco and DF Capital, Inc., a corporation controlled by BAWAG's owner, that gave the corporation the right to participate in proceeds from any sale of Refco. Moreover, during this time, Refco assisted BAWAG in

concealing losses on BAWAG's books, through a complex and shifting set of holdings involving off-shore funds and entities.

3. While assisting Refco with its fiscal year-end transactions, former executives of BAWAG learned, from at least mid-2002 forward, of plans to sell all or part of Refco and that the efforts by Refco to mischaracterize its balance sheet were part of that plan. Accordingly, BAWAG knowingly aided and abetted Refco's deception of investors who purchased its securities:

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. BAWAG, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

6. Certain of the acts, practices, and courses of conduct constituting the violations of law alleged herein occurred within this judicial district.

7. BAWAG, directly and indirectly, has engaged in, and unless restrained and enjoined by this Court will continue to engage in the acts, practices, and courses of business alleged herein, or in transactions, acts, practices, and courses of business of similar purport and object.

DEFENDANT

8. BAWAG is an Austrian banking and financial services institution with its headquarters in Vienna, Austria. In October 2005, BAWAG merged with its subsidiary bank, Österreichische Postsparkasse, to form BAWAG P.S.K. Bank für Arbeit und Wirtschaft und

Österreichische Postsparkasse Aktiengesellschaft. (BAWAG P.S.K. and its predecessor entities and affiliates are hereinafter referred to collectively as BAWAG.) At all times relevant to this Complaint, BAWAG was largely, and eventually completely, owned indirectly by Österreichische Gewerkschaftsbund, the Austrian Trade Union Association.

RELEVANT ENTITIES AND INDIVIDUAL

9. Refco Group Ltd. was a Delaware limited liability company with its headquarters in New York City. The company was a major provider of execution and clearing services for exchange-traded derivatives and of prime brokerage services in the fixed income and foreign exchange markets. It held commodities and securities brokerages. As part of a reincorporation conducted in preparation for its August 10, 2005, initial public offering of common stock, Refco Inc. became the corporate successor to Refco Group Ltd. (Refco Inc. and its predecessor entities and affiliates are hereinafter referred to collectively as Refco.) After the offering, Refco's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)] and traded on the New York Stock Exchange (the "Exchange"). On October 13, 2005, the Exchange halted trading in Refco's common stock, and on October 17, 2005, Refco filed for protection under Chapter 11 of the U.S. Bankruptcy Code. On October 18, 2005, Refco's common stock was delisted by the Exchange. Refco's fiscal year ended at the end of February.

10. Phillip R. Bennett ("Bennett") joined Refco in 1981. Beginning in September 1998, Bennett was Chief Executive Officer and President of Refco and Chairman of its Board of Directors. After Refco's August 2005 initial public offering of common stock, Bennett continued in the positions of Chief Executive Officer, President, and Chairman of the Board. On

October 10, 2005, Refco placed Bennett on an indefinite leave of absence from his executive positions.

11. Refco Group Holdings, Inc. ("RGHI") is a privately held Delaware corporation. It is not, and during all relevant times for this Complaint was not, a subsidiary of Refco. At all relevant times for this Complaint, Bennett controlled RGHI, and it was largely, and eventually completely, owned by him.

FACTS

BAWAG Helps Hide Huge Related Party Transactions

12. Beginning in the late 1990's, Refco assumed significant trading losses incurred by certain of its customers. Over time, the trading losses came to aggregate several hundred million dollars, and eventually, in order to move the losses off the books of Refco, they were assumed by RGHI (the Bennett-controlled entity). As a result, Refco held a receivable from RGHI for hundreds of millions of dollars. Because Bennett was an owner of Refco and controlled RGHI, the RGHI receivable was a related party transaction for Refco. (Related party transactions can trigger certain financial statement disclosure requirements under Generally Accepted Accounting Principles ("GAAP") and, for public companies, can trigger additional disclosure requirements under the federal securities laws.) The amount of the RGHI receivable fluctuated over time, growing at times to approximately \$1 billion. In October 2005, it was \$430 million.

13. Beginning in late February 2000, just days before the end of Refco's fiscal year, Bennett, Refco, and RGHI commenced a scheme designed to conceal the fact that RGHI owed hundreds of millions of dollars to Refco. At the time, Bennett was the President and Chief Executive Officer of Refco and the Chairman of its Board of Directors. The scheme utilized a

series of short-term loans to temporarily shift the hundreds of million of dollars in debt to BAWAG at the end of each Refco fiscal year. At the end of each Refco fiscal year, these transactions allowed RGHI to "pay off" at least part of its debt to Refco. RGHI then owed a debt to BAWAG, which was secured in part by a deposit from Refco to an account at BAWAG. A few days after the Refco fiscal year-ends, the transactions were reversed so that the debt once again resided with the Bennett-controlled entity.

14. To effectuate the February 2000 transactions, BAWAG wired Refco \$300 million. The funds were, at least in part, credited to RGHI and used to pay down the RGHI receivable prior to Refco's fiscal year-end. The same day, Refco wired \$225 million to BAWAG, thus creating an asset on Refco's books (*i.e.*, a deposit at BAWAG), as opposed to a receivable from RGHI.

15. In early March 2000, the \$75 million balance was wired back to BAWAG, together with interest accrued, which constituted, in part, a fee to BAWAG for participating in the scheme. The other aspects of the transactions were reversed by journal entries crediting BAWAG with having "returned" the Refco deposit and reestablishing the RGHI receivable on Refco's books. The transactions served no purpose other than to conceal the fact that a Bennett-controlled entity owed Refco hundreds of millions of dollars.

16. These transactions with BAWAG were repeated, at times with minor variations, at the end of each of Refco's fiscal year-ends through February 2005. During this time, as the RGHI receivable grew in amount, additional third parties were recruited to participate in similar period-end transactions with Refco.

Additional BAWAG Connections to Refco

17. In 1999, BAWAG acquired a 10% membership interest in Refco, which, at the time, was a limited liability company. BAWAG held its interest through an affiliate, BAWAG Overseas, Inc.

18. In July 2002, DF Capital, Inc. (the corporation controlled by BAWAG's owner) entered into a proceeds participation agreement with Refco. The agreement provided that DF Capital would be able to share in the proceeds of any sale of Refco, in exchange for certain amounts invested in Refco by DF Capital.

19. Pursuant to the participation agreement, DF Capital eventually acquired the rights to participate in any Refco sale proceeds as if it held an equity interest in Refco of approximately 27%, in addition to the 10% equity interest that BAWAG held through BAWAG Overseas, Inc.

20. In addition, beginning in or around 2000, Refco began to assist BAWAG in concealing losses on BAWAG's books, through a complex and shifting set of holdings involving off-shore funds and entities.

21. In August 2004, as one step in Bennett's plan to cash out his ownership interest, Refco entered into a leveraged recapitalization. Pursuant to the recapitalization, Thomas H. Lee Partners, L.P. and its affiliates and co-investors acquired an equity interest of approximately 57% in Refco, for approximately \$507 million in cash. Pursuant to BAWAG's direct ownership interest and the DF Capital proceeds participation agreement, BAWAG and its DF Capital affiliate received hundreds of millions of dollars in proceeds from the recapitalization and its related distributions.

22. As a result of the recapitalization and the related distributions, BAWAG and DF Capital no longer held a direct ownership position or proceeds participation rights in Refco. Nevertheless, BAWAG thereafter participated in another fiscal year-end transaction designed to help Refco conceal the RGHI receivables.

Refco Filings Fail to Disclose the RGHI Receivables

23. As part of the recapitalization, Refco issued \$600 million in senior subordinated notes. The notes were issued, through three banking institutions, to certain private investors pursuant to a private offering circular. The private offering circular did not disclose the RGHI receivable related party indebtedness, although that indebtedness would have been material to a purchaser of the notes.

24. In April 2005, Refco exchanged the notes for registered senior subordinated notes offered publicly pursuant to Refco's Registration Statement on Form S-4 that was filed with the Commission and that was declared effective on April 6, 2005.

25. Pursuant to the federal securities laws, Refco was required to disclose and describe in its Registration Statement the related party indebtedness involving the RGHI receivable, including the existence of that indebtedness during Refco's fiscal years ended February 28, 2003, February 29, 2004, and February 28, 2005. The Registration Statement did not disclose the indebtedness.

26. The Registration Statement also contained audited financial statements for Refco's fiscal years ended February 28, 2002, February 28, 2003, and February 29, 2004. GAAP required that the related party transactions related to the RGHI receivable be disclosed in

those audited financial statements. The audited financial statements in the Registration Statement made no such disclosures.

27. Both at the time the initial notes were sold to private investors, and at the time the registered notes were publicly offered, BAWAG knew that it had assisted Refco in concealing from investors hundreds of millions of dollars in related party transactions. Moreover, former BAWAG executives knew that Refco had repeatedly hidden these transactions in order to effectuate a sale of Refco.

28. On July 1, 2005, Refco filed with the Commission an annual Report on Form 10-K for Refco's fiscal year ended February 28, 2005. The Annual Report filing was required as a consequence of Refco's April 2005 public offering of its senior subordinated notes.

29. In August 2005, Refco commenced the initial public offering of its common stock, pursuant to Refco's Registration Statement on Form S-1 that was filed with the Commission and that was declared effective on August 8, 2005.

30. Pursuant to the federal securities laws, Refco was required to disclose and describe in its Annual Report the related party indebtedness involving the RGHI receivable during Refco's fiscal year ended February 28, 2005. Pursuant to the federal securities laws, Refco was also required to disclose and describe in its Registration Statement the related party indebtedness involving the RGHI receivable, including that indebtedness during Refco's fiscal years ended February 28, 2003, February 29, 2004, and February 28, 2005. Neither the Annual Report nor the Registration Statement disclosed the indebtedness.

31. The Annual Report and the Registration Statement also contained audited financial statements for Refco's fiscal years ended February 28, 2003, February 29, 2004, and

February 28, 2005. GAAP required that the related party transactions related to the RGHI receivable be disclosed in those audited financial statements. The audited financial statements in the Annual Report and the Registration Statement made no such disclosures.

32. Accordingly, the private offering circular for the initial sale of the senior subordinated notes, the Registration Statement declared effective April 6, 2005, the Annual Report filed on July 1, 2005, and the Registration Statement declared effective August 8, 2005, were each false and materially misleading, in violation of the federal securities laws.

33. When BAWAG entered into the fiscal year-end transactions, former BAWAG executives understood, from at least 2002 through 2004, that Refco had misstated its balance sheet, that Bennett and BAWAG intended to cash out their Refco ownership positions, and that concealment of the RGHI receivables would increase the likelihood of Refco being sold. By the time of the February 2005 year-end transactions, the former executives knew that Refco would file a Registration Statement with the Commission for its senior subordinated notes and that the Registration Statement would not accurately reflect the related party transactions described above. By assisting in the fiscal year-end fraudulent scheme, BAWAG knowingly aided and abetted Refco in its deception of investors who purchased Refco securities.

FIRST CLAIM FOR RELIEF

FRAUD

Aiding and Abetting Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]

34. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

35. As set forth above, Refco, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the

purchase or sale of securities, knowingly or recklessly, has: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or has omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of Refco securities and upon other persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5].

36. BAWAG knowingly provided substantial assistance to Refco in the commission of these violations.

37. By reason of the conduct described, BAWAG aided and abetted Refco's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5].

SECOND CLAIM FOR RELIEF

REPORTING VIOLATIONS

Aiding and Abetting Violations of Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and Exchange Act Rule 15d-2 [17 C.F.R. §§ 240.15d-2]

38. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

39. Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and rules promulgated thereunder require that a registrant with a registration statement declared effective pursuant to the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*], but which has no issue of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], file with the Commission certain information, documents, and reports that accurately reflect the registrant's financial performance and provide other information to the public.

40. As a consequence of the conduct of BAWAG, as set forth above, Refco's annual Report on Form 10-K for its fiscal year ended February 28, 2005, violated Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and Exchange Act Rule 15d-2 [17 C.F.R. § 240.15d-2].

41. BAWAG knowingly provided substantial assistance to Refco in the commission of these violations.

42. By reason of the foregoing, BAWAG aided and abetting Refco's violations of Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and Exchange Act Rule 15d-2 [17 C.F.R. § 240.15d-2].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

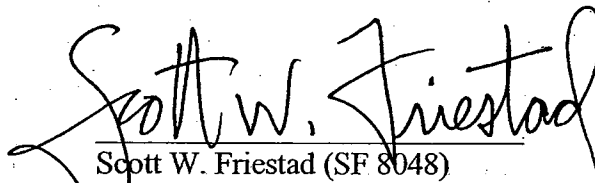
Permanently enjoining BAWAG, its agents, servants, employees, and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and from aiding and abetting violations of Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] and Exchange Act Rule 15d-2 [17 C.F.R. § 240.15d-2].

II.

Grant such other relief as this Court may deem just and appropriate.

Dated: Washington, D.C.
June 1, 2006

Respectfully submitted,



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