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ANFRAGE

des Abgeordneten Jenewein
und weiterer Abgeordneter
an die Bundesministerin für Justiz
betreffend laufendes Verfahren in der Causa Madoff – Primeo Fund, Herald
Fund, Alpha Prime Fund rund um das Netzwerk von Bank Medici und
Unicredit Bank Austria

Im Dezember 2008 flog in New York einer der größten Finanzskandale der Welt auf: das Schneeball-System des Bernard L. Madoff. Verloren gingen – wie aus den Unterlagen des dort zuständigen Masseverwalters Irving H. Picard ersichtlich – rund USD 65 Mrd. Es stellte sich heraus, dass in mehr als 20 Jahren des Fortbestehens dieses Pyramidenspiels lediglich die Gelder späterer Investoren dazu genutzt wurden frühere Investoren auszuzahlen. Der Bankenplatz Österreich scheint in diesem System eine besondere Rolle gespielt zu haben. So war mit der Bank Medici ein wesentlicher Teil dieses globalen Betrugssystems direkt in der Bundeshauptstadt Wien angesiedelt.

Innerhalb weniger Monate wurden in den USA zwei Berichte mit insgesamt mehr als 500 Seiten (und mehr als 350 Beilagen) zu den Verfehlungen der dortigen Aufsicht veröffentlicht. Es wurden massive Versäumnisse der U.S. *Securities and Exchange Commission* (SEC) in der Kontrolle und Überwachung Madoffs aufgedeckt und der Öffentlichkeit zugänglich gemacht. Obwohl von Madoff selbst ursprünglich behauptet, war für alle dort Beteiligten von Anfang an klar: einen Betrug dieser Größenordnung kann eine Einzelperson nicht alleine durchführen. Es benötigte IT-Spezialisten, administrative Mitarbeiter im System selbst, sowie Leute, welche die Firma nach außen hin deckten und einen Mantel der Legitimität erscheinen ließen. Aber das alles wäre zwecklos gewesen ohne jene Personen, die in Hinblick auf die persönlich zu lukrierenden Millionenbeträge schlichtweg die eigenen Augen zukniffen, Kontrollaufgaben unterließen, Investoren in die Irre führten und wissentlich und willentlich täuschten, um dieses System solange wie möglich am Leben zu erhalten.

Nach wie vor werden in den USA in dieses System verwickelte Personen verfolgt und im Herbst sollen fünf weitere dieser Personen angeklagt werden.

Trotz dieses Einsatzes der amerikanischen Behörden und des Masseverwalters (dieser versucht sogar die scheinbar schlafenden österreichischen Strafbehörden soweit wie irgend möglich zu unterstützen) die Causa aufzuklären und die Verantwortlichen der gerechten Strafe zuzuführen, wird hier in Österreich scheinbar alles getan, um die Causa erfolgreich zu verschleppen und in die Länge zu ziehen.

Obwohl das Eingangs erwähnte Netzwerk eines der ersten und aktivsten in Madoffs Pyramidenspiel war und als Türöffner für Europäische Investoren diente, werden die Verantwortlichen durch diese Verschleppung nach wie vor geschützt. Für einen Rechtsstaat, der in Fragen der Korruption in den

vergangenen Jahren im Vergleich zu anderen Ländern ständig abgesunken ist, ist dies ein untragbarer Zustand!

Bemerkenswert ist die Tatsache, daß in der Firmenstruktur der Bank Austria Worldwide Fund Management Ltd. (BAWFM) die BankAustria zu 75% und die AVZ zu 25% beteiligt war. Die AVZ, als Stiftung von SPÖ-Bürgermeister Dr. Michael Häupl ins Leben gerufen, war ursprünglich dazu gedacht, den Verkaufserlös der Zentralsparkasse durch die Einbringung in eine Stiftung vor der Kontrolle durch den Rechnungshof zu schützen – mit tatkräftiger Unterstützung der Verantwortlichen in der Bank Austria.

Ein englischer Buchautor hat im September 2013 eine Schrift veröffentlicht (**Anlage 2**), wobei darin klar und deutlich zum Ausdruck kommt, daß die damals Verantwortlichen der Bank Austria bereits im Jahr 2001 durch einen internen Revisionsbericht – spätestens jedoch im Jahr 2003 durch einen weiteren Revisionsbericht über das Schneeballsystem Madoff informiert gewesen sind. Es steht jedoch zu befürchten, daß diese Berichte keine wie immer geartete Konsequenzen bei den damals verantwortlichen Personen ausgelöst haben und dadurch die Verluste durch Madoff noch unnötigerweise vergrößert worden sind.

Zusammenfassend ist festzustellen:

- 1.) Der Madoff Finanzskandal hatte mit SPÖ-affilierten Institutionen (AVZ-Gemeinde Wien), Bank Medici, Unicredit BankAustria als Gründungsproponenten starken Österreich-Bezug.
- 2.) Die damals erstellten Anlegerinformationen waren – bestätigt durch Gerichtsgutachten – nicht den wahren Tatsachen entsprechend. Auch die versprochenen und verpflichtenden Leistungen wurden von den Anlegern zwar bezahlt aber nicht erfüllt.
- 3.) Es sind durch dieses Netzwerk, trotz mannigfaltiger Warnsignale, Volumen in EUR-Milliardenhöhe ohne Kontrolle in das Madoff-System gespeist worden. Das hat zweifellos den Betrug verlängert und den Schaden massiv erhöht.
- 4.) Provisionen von hunderten Millionen EUR sind – über offshore Gesellschaften mit österreichischem Hintergrund – zurückgeflossen. Der Verbleib dieser Gelder ist zu hinterfragen – die österreichischen Gerichte haben bislang jedoch keine gesteigerte Arbeitsintensität an den Tag gelegt, um den Verbleib zu klären.
- 5.) Vorstände der Bank Austria haben - teilweise in Doppelfunktionen - die führende Bank des Landes für ihre persönlichen Zwecke instrumentalisiert um Kundengelder in entsprechende Kanäle zu leiten. Die handelnden Personen werden von der Bank und der Politik weiterhin geschützt.
- 6.) Hinweisen auf verschwundene Kundengelder und Zahlungen wie z.B. von den Schweizer und Luxemburger Behörden wurde von den österreichischen Behörden nicht nachgegangen und bis dato erfolgreich ignoriert.

7.) Möglichkeiten auf internationale Zusammenarbeit zur Aufklärung und Ausforschung der Täter und diese den entsprechenden Gesetzen zuzuführen, wird in einer unfassbaren Art und Weise ignoriert. Durch beinahe apathische Verzögerungstaktiken wird der Fall, über zivilrechtliche Verjährungsfristen hinaus, in die Länge gezogen.

8.) Anstatt die Bank zur Zusammenarbeit an der Aufklärung zu bewegen, wird in der Bank sowie Justiz- und Finanzressort an einer konzertierten Verschleppungsstrategie gearbeitet.

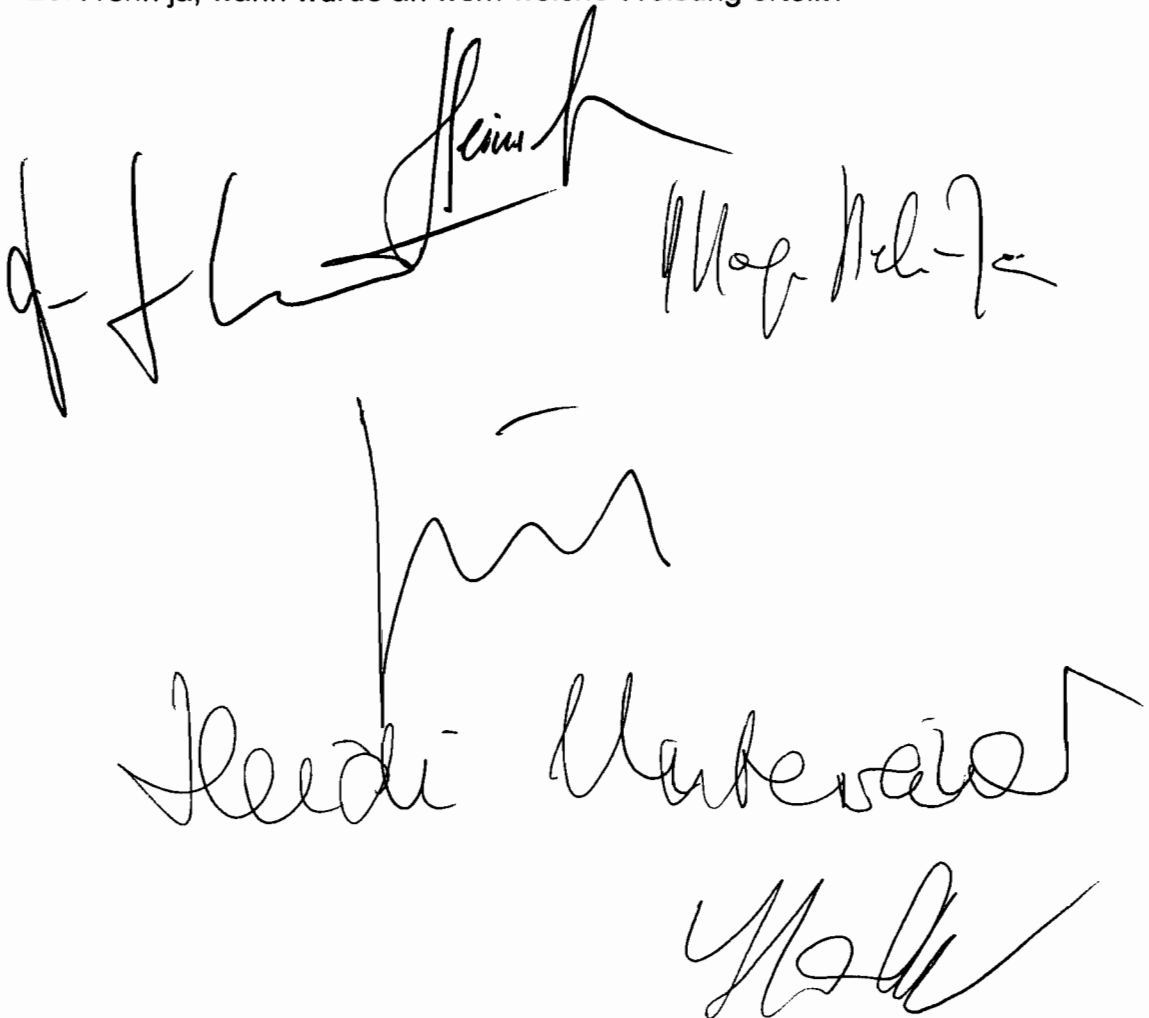
In diesem Zusammenhang richten die unterfertigten Abgeordneten an die Bundesministerin für Justiz folgende

Anfrage

1. Hat das BMJ Erkenntnisse, wonach die Herrn Werner Kretschmer, Peter Fischer, Stefan Zapatocky und Gerhard Randa in einem Strafakt der US-amerikanischen Behörden als Beschuldigte in einem das Schneeballsystem Madoff betreffenden Verfahren geführt werden?
2. Wenn nein, warum nicht?
3. Wenn ja, welche Handlungen hat die weisungsgebundene österreichische Staatsanwaltschaft bislang daraus gezogen?
 - a. Wenn ja, wurde Seitens der US-Behörden um Unterstützung und Rechtsbeihilfe angesucht?
 - b. Wenn ja, wann wurde Seitens der US-Behörden um Unterstützung und Rechtsbeihilfe angesucht?
4. Wenn ja, welcher Staatsanwalt war mit der Beantwortung betraut?
5. Welche Konsequenzen hat die weisungsgebundene österreichische Staatsanwaltschaft aus dem Schreiben der renommierten amerikanischen Rechtsanwaltskanzlei BakerHostetler vom 14.12.2012 gezogen, worin der österreichische Staatsanwalt Mag. Michael Radasztics über die Verstrickungen der oben genannten Bank-Austria Mitarbeiter informiert wurde? **(Siehe Anlage 1)**
6. Entspricht es den Tatsachen, daß der weisungsgebundene österreichische Staatsanwalt Mag. Michael Radasztics nicht mehr mit dem „Fall Bank Austria“ (615 St 2/13 a (vormals: 604 St 19/09 i), 604 St 6/09 b oder 604 St 14/11 g) betraut ist?
7. Wenn ja, warum bearbeitet Mag. Michael Radasztics diesen Fall nicht mehr?

8. Wenn ja, wer behandelt nunmehr diese Causa?
9. Wenn ja, wieviele justizielle Einvernahmen hat der Staatsanwalt Mag. Michael Radasztics in den Jahren 2009 bis 2013 in der Causa (615 St 2/13 a (vormals: 604 St 19/09 i), 604 St 6/09 b oder 604 St 14/11 g) bislang vorgenommen?
10. Wenn ja, hat der Staatsanwalt Mag. Michael Radasztics in den Jahren 2009-2013 jemals eine Rechtfertigung gegenüber einer ihm übergeordneten Stelle über den Ermittlungsstand abgeben müssen?
 - a. Wenn ja, wann, wie oft und an wen?
11. Welche Aktivitäten wurden bislang von dem/der Nachfolger/Nachfolgerin von Staatsanwalt Mag. Michael Radasztics in der Causa (615 St 2/13 a (vormals: 604 St 19/09 i), 604 St 6/09 b oder 604 St 14/11 g) gesetzt?
12. Entspricht es den Tatsachen, daß zumindest im Fall von Frau Radel-Leszczyński bereits eine Einstellung der Erhebungen in allen Verdachtspunkten erfolgt ist?
13. Ist dem BMJ bekannt, daß in der Firmenstruktur der Bank Austria Worldwide Fund Management Ltd. (BAWFM) die Bank Austria zu 75% und die AVZ zu 25% beteiligt war?
14. Welche Ermittlungsschritte hat die Staatsanwaltschaft bislang im Bereich der AVZ (Hausdurchsuchungen, Kontoöffnungen etc.) gesetzt?
15. Wurde im Zuge der bisherigen Ermittlungen überprüft, ob der Stiftungszweck der AVZ die Gründung einer Offshore-Gesellschaft zum Zwecke des Vertriebs von Primeo Fund – als „Mastermind Fonds“ – welche dann als Klone beim Herald Fund und Alpha Prime fortgeführt wurde ?
16. Wenn ja, mit welchem Ergebnis?
17. Wurde im Zuge der bisherigen Ermittlungen überprüft, ob es im Zeitraum der Geschäftstätigkeit der AVZ mit der Bank-Austria Geldflüsse von der AVZ zu politischen Parteien gegeben hat?
18. Wenn ja, mit welchem Ergebnis?
19. Welche Ermittlungsschritte hat die Staatsanwaltschaft im Zeitraum 2008-2013 im Bereich der Bank Medici (Hausdurchsuchungen, Kontoöffnungen etc.) gesetzt?
20. Wie oft und wann genau wurde Frau Sonja Kohn in Österreich justiziell einvernommen?

21. Welcher Staatsanwalt hat diese Einvernahmen durchgeführt?
22. Liegen dem BMJ Erkenntnisse vor, wonach Sonja Kohn, die ja 75 % des Aktienanteils der Bank Medici inne hatte, Teil eines internationalen Betrugssystems gewesen ist?
23. Wenn nein, welche Ermittlungsschritte wurden bislang zur Klärung der Rolle von Sonja Kohn im Schneeballsystem Madoff in Österreich gesetzt? Insbesondere hinsichtlich der Datensicherung da die Bank Medici als „Kostenstelle“ in der BankAustria geführt wurde.
24. Wenn ja, wann ist damit zu rechnen, daß gegen Sonja Kohn und weitere Verantwortliche aus dem Umfeld der BankAustria in Österreich Anklage erhoben wird?
25. Ist Ihnen das Buch „the pyramide builders“, das im September 2013 erschienen ist bekannt?
26. Welche Prüfung werden von ihrem Ressort auf Grund der darin aufgestellten Behauptungen durchgeführt?
27. Gab oder gibt es Weisungen aus dem Justizressort an die Staatsanwaltschaft in der Causa AZ 615 St 2/13 a (vormals: AZ 604 St 19/09 i), AZ 604 St 6/09 b oder AZ 604 St 14/11 g?
28. Wenn ja, wann wurde an wem welche Weisung erteilt?



BakerHostetler

December 14, 2012

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Mag. Michael Radasztics
Public Prosecutor
Public Prosecution Office, Republic of Austria
Landesgerichtsstrasse 11
1082 Wien, Postfach 400

Re: AZ 604 St 19/09i

Dear Mag. Radasztics:

On January 18, 2012 the Public Prosecution Office Vienna (the "Office") accepted Irving H. Picard (the "Trustee"), the trustee for the liquidation of the substantively consolidated estate of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff") (the "Estate"), as a Victim in AZ 604 St 19/09i (the "Criminal Proceeding"). As Trustee he has all the rights, duties, and responsibilities of a bankruptcy trustee under U.S. law, and additional powers and responsibilities afforded him under the Securities Investor Protection Act of 1970 (15 U.S.C. §§ 78aaa *et seq.*). He is charged with investigating Madoff's fraud, bringing any legal claims owned by the Estate, and recovering assets for the Estate to be distributed to the victims of Madoff's Ponzi scheme. In accordance with these duties, the Trustee has brought claims against certain parties under suspicion in the Criminal Proceeding. We write on his behalf here.

The Trustee's ongoing investigation of UniCredit Bank Austria AG ("Bank Austria") and certain of its affiliated companies and executives has uncovered evidence that a group of high-ranking directors and officers at Bank Austria and certain of its subsidiaries (the "BA Madoff Group")¹ conspired to profit from Madoff's fraud and secretly distribute at least \$55 million in illicit proceeds through a circuitous system of transfers designed to obscure their nature and origin. This conspiracy exploited the BA

¹ This group includes at least Gerhard Randa, Friedrich Kadmoska, Stefan Zapotocky, Werner Kretschmer, Wilhelm Hemetsberger, Peter Scheithauer, Harald Nograsek, Josef Duregger, Peter Fischer, Ursula Radel-Leszczynski, and Sonja Kohn.

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Madoff Group's involvement in the solicitation of investor funds for Bank Austria's Madoff investment vehicle, Primeo Fund Ltd. ("Primeo Fund"). The BA Madoff Group claimed credit for investment services that Madoff purported to perform and then charged Primeo Fund's investors substantial fees for these services—services it did not, and could not have, performed. The BA Madoff Group then directed certain Bank Austria entities and affiliates to covertly distribute these proceeds to its members in order to maximize their profits and avoid paying taxes. The Trustee believes that the facts set forth herein are highly relevant to your Criminal Proceeding.

EXECUTIVE SUMMARY

For over a decade, Bank Austria, through certain of its high-ranking directors and officers, operated Bank Austria Worldwide Fund Management Ltd. ("BA Worldwide") as a slush fund (the "Bank Austria Slush Fund Conspiracy"). This conspiracy is different from, but inextricably intertwined with, Bank Austria's illicit scheme to solicit investor funds for the Primeo Fund. The Bank Austria Slush Fund Conspiracy operated on a micro level—it was designed to enrich certain Bank Austria executives responsible for Primeo Fund's investments through Madoff and BLMIS. Specifically, a select group of Bank Austria executives, including Sonja Kohn ("Kohn"), Ursula Radel-Leszczyński ("Radel-Leszczyński"), and Gerhard Randa ("Randa"), directed and authorized the laundering of tens of millions of dollars of ill-gotten Madoff-related proceeds from BA Worldwide to bank accounts that they owned and controlled (the "Slush Fund Payments").

To mask the illegality of the Slush Fund Payments, the BA Madoff Group caused BA Worldwide to transfer the Madoff-related proceeds through certain Bank Austria subsidiaries into offshore companies and/or bank accounts. Ultimately, the Slush Fund Payments enriched Austrian nationals at the expense of the investors they purported to service at Bank Austria. The tortuous nature of the Bank Austria Slush Fund Conspiracy allowed Bank Austria executives to: (i) obfuscate the nature of BA Worldwide's ill-gotten funds; (ii) maximize the BA Madoff Group's Madoff-related profits; and (iii) keep these profits away from various Austrian regulatory agencies, including the Austrian Tax authorities. The full extent of the Bank Austria Slush Fund Conspiracy remains unknown.

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KOHN PRESENTS BANK AUSTRIA WITH ACCESS TO MADOFF**Kohn and Madoff's Special Relationship**

The Bank Austria Slush Fund Conspiracy could not have happened without Kohn's lucrative access to Madoff. Kohn met Madoff in the mid-1980s in New York. She was a new face on Wall Street with little to no experience in the financial industry and he had a successful and well-known broker-dealer business at BLMIS.² Unbeknownst to most in the financial community, however, Madoff also ran an investment advisory business at BLMIS (the "IA Business").³ The IA Business, however, was not profitable.⁴ In fact, it was a Ponzi scheme.⁵

Madoff's IA Business, like all Ponzi schemes, needed fresh investment capital.⁶ The criminal nature of the business, however, necessitated a high level of discretion. Madoff did not publicly disclose the existence of his IA Business.⁷ He depended largely on introducing agents to solicit investments for the IA Business. These introducing agents targeted, primarily, high net-worth individuals. Madoff disfavored sophisticated institutional investors.

Soon after meeting Madoff, Kohn agreed to act as an introducing agent for his IA Business.⁸ In return, Madoff would pay her commissions.⁹ But Madoff and Kohn's agreement was not a typical commission arrangement.¹⁰ Kohn masked her commissions by invoicing BLMIS for phony research that Kohn largely plagiarized from the public domain or from Bank Austria's proprietary databases.¹¹ Madoff never used this research,¹² but instructed BLMIS and its U.K. affiliate, Madoff Securities International Limited, to pay Kohn the invoiced amounts.¹³ In total, Madoff paid Kohn at least \$65

² See Kohn Complaint at ¶¶ 53 and 203.

³ See Kohn Complaint at ¶¶ 51 and 53; Case Statement at p. 42; Erin E. Arvedlund, *Don't Ask Don't Tell*, *Barron's* (7 May 2001), attached hereto as Exhibit 17.

⁴ See Kohn Complaint at ¶ 64.

⁵ See Kohn Complaint at ¶¶ 51-52 and 54; Case Statement at p. 42; the Trustee's Amended Complaint in *Picard v. HSBC, et al.* (the "HSBC Complaint") at ¶ 139; 12 March 2009 Southern District of New York Allocation of Madoff Transcript, attached hereto as Exhibit 18.

⁶ See Kohn Complaint at ¶ 8.

⁷ See Exhibit 17.

⁸ See Kohn Complaint at ¶¶ 13 and 206; Case Statement at p. 9.

⁹ See Kohn Complaint at ¶¶ 17, 208, and 265; Case Statement at p. 9.

¹⁰ See Kohn Complaint at ¶¶ 209-210, and 216.

¹¹ See Kohn Complaint at ¶¶ 13-14, 85, 213, and 270.

¹² See Kohn Complaint at ¶ 213.

¹³ See Kohn Complaint at ¶¶ 216, 265, 271, and 543; Case Statement at pp. 43-44, 85-87, and 97-101.

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million in kickbacks through this illicit payment scheme.¹⁴ She created shell companies located in Austria, New York, and elsewhere to receive and later transfer this money to herself, her family, and her co-conspirators, including several Austrian nationals and companies located and/or founded in Austria.¹⁵

Kohn Pitches Madoff to Bank Austria

Kohn was extremely well connected in the European financial community.¹⁶ One such connection was Randa, the newly appointed Chairman of Bank Austria.¹⁷ When Randa took over Bank Austria, he sought to implement an aggressive expansion of the bank's presence outside of Austria, including in New York. Kohn's connections to the Wall Street community appealed to Randa. Kohn, through her New York company, Eurovaleur, Inc. ("Eurovaleur"), hosted Randa on numerous trips to New York to solicit potential investors and business partners, including Madoff.¹⁸

Bank Austria appealed to Kohn, too. Bank Austria had the infrastructure and clientele to funnel large amounts of money into BLMIS, and the capability to create investment vehicles that could be wholly-invested through BLMIS such as Primeo Fund. Moreover, Madoff was open to this type of investment structure—as exemplified by his relationship with Fairfield Greenwich Group, whose feeder fund, Fairfield Sentry Ltd., opened a managed account at BLMIS in 1990.¹⁹ Madoff's willingness to work with feeder funds created an opportunity for Kohn and the BA Madoff Group and laid the groundwork for the Bank Austria Shush Fund Conspiracy.

Beginning in or around 1992, Kohn met with Bank Austria executives, including Randa, Stefan Zapotocky ("Zapotocky"), Peter Fischer ("Fischer"), and Peter Scheithauer ("Scheithauer"), to discuss how Bank Austria could monetize Kohn's connection to Madoff.²⁰ Kohn pitched Randa, Scheithauer, Fischer, and Zapotocky on the consistent returns that Madoff had generated for the accounts of investors that Kohn had so far solicited.²¹ As the negotiations continued, Kohn brokered meetings between Zapotocky, Fischer, Wilhelm Hemetsberger ("Hemetsberger"), and Madoff in New

¹⁴ See Kohn Complaint at ¶¶ 10, 211, 219, and 264.

¹⁵ See Kohn Complaint at ¶¶ 11, 211-212, 263-268, and 311; Case Statement at pp. 87-96, and 106-107.

¹⁶ See Kohn Complaint at ¶¶ 197 and 199.

¹⁷ See Kohn Complaint at ¶¶ 132 and 330-311; Case Statement at p. 35.

¹⁸ See Case Statement at p. 83.

¹⁹ See *Picard v. Fairfield Sentry Ltd., et al.*; Exhibit 17.

²⁰ See Kohn Complaint at ¶ 330.

²¹ See Kohn Complaint at ¶¶ 208 and 337.

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York.²² Though Madoff disfavored institutional investors, he agreed to give Bank Austria a managed IA Business account because Kohn would serve as the go-between.²³ Kohn's participation created a buffer that insulated Madoff from the institutional due diligence and attention that could have exposed him as a fraud.

This is exemplary of Kohn and Bank Austria's *quid-pro-quo* relationship: Bank Austria landed an investment relationship with an exclusive New York fund manager and Kohn netted investors for BLMIS, which earned her commissions. Additionally, in return for providing Bank Austria with access to Madoff, the BA Madoff Group sold Kohn a 90% share of MediciFinanz Services GmbH ("MediciFinanz"), thereby providing her with her own entity under the Bank Austria umbrella.²⁴ MediciFinanz operated as a *de facto* branch of Bank Austria.²⁵ Kohn used MediciFinanz to distribute Primeo Fund and manage Bank Austria's relationship with Madoff and BLMIS.²⁶ The BA Madoff Group later helped Kohn acquire a banking license and turn MediciFinanz into Bank Medici AG ("Bank Medici").²⁷

The Allure of Madoff

Madoff Purported to Do All the Work

For institutional investors and feeder funds, investing through Madoff was desirable, in part, because he made all the investment decisions. Madoff's IA Business purported to have a proprietary investment strategy, the split-strike conversion strategy, which yielded consistent results.²⁸ This strategy required no additional input from any outside manager.²⁹ Indeed, contrary to the testimony of former Bank Austria and Bank Medici officials, Madoff insisted that all investment management responsibilities vis-à-vis feeder funds like Primeo Fund be delegated to BLMIS. This meant that Madoff made all decisions regarding the purported purchase and sale of securities for his customers, including which securities to trade, the timing of the trades, and the amounts

²² See Kohn Complaint at ¶¶ 31, 130, 315, and 354-355; Case Statement at p. 84; Von Ashwein Sankholkar, *FMA-Protokolle: Enges Verhältnis von Ex-Bank-Austria-Managern zu Madoff*, FORMAT (25 June 2009), attached hereto as Exhibit 3; 2 December 2009 Interrogation of Duregger, attached hereto as Exhibit 5; September 2004 E-mails from Reuss to Plaia, attached hereto as Exhibit 14.

²³ See 21 December 1995 Facsimile from Kohn to Chapman, attached hereto as Exhibit 11.

²⁴ See Kohn Complaint at ¶¶ 25, 72, 116, and 381; Case Statement at pp. 25-26 and 33; Exhibit 5; Exhibit 6; 16 December 2010 Interrogation of Radel-Leszczyński, attached hereto as Exhibit 7.

²⁵ See Case Statement at pp. 26 and 33.

²⁶ See Kohn Complaint at ¶¶ 351 and 389; Case Statement at pp. 25-26; Exhibit 5.

²⁷ See Kohn Complaint at ¶ 392; Case Statement at pp. 325-26; Exhibit 5.

²⁸ See Exhibit 17.

²⁹ See Kohn Complaint at ¶ 55.

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traded on behalf of his customers.³⁰ Despite allowing him to carry out all investment management responsibilities for Primeo Fund, there is no indication that BA Worldwide formalized the sub-delegation of these duties to BLMIS.³¹

In reality, as Madoff admitted, he never made any trades on his customers' behalf.³² At all relevant times, the IA Business was a Ponzi scheme³³—Madoff paid returns to the IA Business's investors from their own money or the money paid by subsequent investors.³⁴ Madoff fabricated monthly or quarterly statements showing that securities were held in, or had been traded through, the IA Business.³⁵ BA Worldwide received copies of these statements and forwarded duplicates to Kohn.³⁶ At all relevant times, Bank Austria had no discretion or input over the trades that Madoff was purporting to make with the investments of Primeo Fund.³⁷

The split strike conversion strategy was not, as it claimed, the BA Madoff Group's strategy. For example, on February 20, 2002, Radel-Leszczynski, on behalf of BA Worldwide and from a MediciFinanz facsimile machine, sent BLMIS a facsimile confirming Radel-Leszczynski's description of Madoff's split-strike conversion strategy on Primeo Fund marketing materials.³⁸

Madoff Left Fees on the Table

Even though BA Worldwide provided no meaningful services to Primeo Fund's IA Business accounts,³⁹ BA Worldwide took substantial management and performance fees from their customers' investments in Primeo Fund.⁴⁰ It is industry standard for investment management companies to charge performance and management fees. Typically, investment managers like Madoff charged management fees amounting to 1-2% of the net asset value of the fund and performance fees of 10-20% of the profits of the fund.

³⁰ See Kohn Complaint at ¶¶ 55-57.

³¹ See Kohn Complaint at ¶ 391; Exhibit 3; Exhibit 7 ("There are no contracts between [BA Worldwide] and Madoff:").

³² See Kohn Complaint at ¶¶ 60-61; HSBC Complaint at ¶¶ 37-38; Exhibit 18.

³³ See HSBC Complaint at ¶ 39; Exhibit 18.

³⁴ See Kohn Complaint at ¶¶ 51-52, 54, and 62-63; HSBC Complaint at ¶ 40.

³⁵ See Kohn Complaint at ¶ 59; HSBC Complaint at ¶ 37.

³⁶ See Kohn Complaint at ¶ 59.

³⁷ See Kohn Complaint at ¶¶ 58 and 388.

³⁸ See Kohn Complaint at ¶ 35; Case Statement at p. 83; 20 February 2002 Facsimile from Radel-Leszczynski to DiPascali, attached hereto as Exhibit 10.

³⁹ See Kohn Complaint at ¶¶ 356 and 362.

⁴⁰ See Kohn Complaint at ¶¶ 360 and 362; HSBC Complaint at ¶ 16; 25 April 2007 Primeo Fund Offering Memorandum, attached hereto as Exhibit 9.

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Contrary to industry standards,⁴¹ Madoff did not charge any management or performance fees, claiming he was happy to only earn commissions on the trades.⁴² With regard to the Primeo Fund, Madoff walked away from tens of millions of dollars.⁴³ Rather than passing this money on to investors and clients, the BA Madoff Group, through BA Worldwide, conspired to pocket these fees.⁴⁴

Bank Austria Took All the Credit

In order to legitimize its retention of management and performance fees, Bank Austria needed to appear to its investors as though it was in fact performing these services. This façade also facilitated Madoff's efforts to keep his IA Business in large part a secret.⁴⁵ Without this smokescreen, the size of the IA Business would have invited unwanted attention from regulators, sophisticated investors, and other hedge funds that could have discovered Madoff's fraud. Madoff succeeded in keeping the IA Business a secret for decades. It was not until 2006 when an audit from the United States Securities and Exchange Commission forced Madoff to register BLMIS as an investment adviser as required under United States law.

The BA Madoff Group concealed Madoff's involvement vis-à-vis the Primeo Fund's investments.⁴⁶ For example, even though Primeo Fund fed all its investments to BLMIS to be traded under Madoff's investment strategy, Bank Austria purposefully omitted Madoff and BLMIS from Primeo Fund's offering memoranda.⁴⁷ Bank Austria also founded Primeo Fund's service companies in known opaque jurisdictions that allowed Bank Austria to omit Madoff and BLMIS from Primeo Fund's marketing materials.⁴⁸

Even to regulators, Bank Austria held itself out as the manager of Primeo Fund's investments.⁴⁹ Kohn, Radel-Leszczyński, and their colleagues at Bank Austria and Bank Medici testified to the Austrian authorities in 2009 that they were responsible for

⁴¹ See Exhibit 6.

⁴² See HSBC Complaint at ¶ 18(e); Exhibit 17.

⁴³ See the "HSBC Complaint at ¶ 209; Exhibit 17.

⁴⁴ See Kohn Complaint at ¶¶ 22, 32, and 359-360; Case Statement at pp. 32-33; HSBC Complaint at ¶ 315.

⁴⁵ See Exhibit 17.

⁴⁶ See Kohn Complaint at ¶¶ 341, 521, and 522; Case Statement at pp. 29 and 119; HSBC Complaint at ¶¶ 16 and 148; 7 June 2007 Email from Radel-Leszczyński to Yanowitz, attached hereto as Exhibit 13.

⁴⁷ See Kohn Complaint at ¶¶ 341 and 521; Case Statement at pp. 29 and 119; Exhibit 9.

⁴⁸ See HSBC Complaint at ¶ 146; January 2009 Interrogation of Pirkner, attached hereto as Exhibit 8.

⁴⁹ See Kohn Complaint at ¶¶ 30 and 58; Case Statement pp. 45 and 85.

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the implementation of the split-strike conversion strategy.⁵⁰ Madoff, they claimed, was merely their executing "broker."⁵¹ Not only is this notion contradicted by BLMIS internal records, but also by Bank Austria's contemporary correspondence with BLMIS.⁵²

In the end, Bank Austria capitalized on the illegality of Madoff's LA Business by collecting fees otherwise unavailable to them and claiming credit for the services that Madoff purported to provide.⁵³

THE BANK AUSTRIA SLUSH FUND CONSPIRACY**The "BA Madoff Group"**

To appease Madoff's demands for secrecy, and to maximize their shares of the profits, a select group of high-ranking officials at Bank Austria and its subsidiaries undertook to oversee, exclusively, Bank Austria's dealings with BLMIS.⁵⁴ This group included Randa, Friedrich Kadmoska ("Kadmoska"), Zapotocky, Werner Kretschmer ("Kretschmer"), Hemetsberger, Scheithauer, Harald Nogrsek ("Nogrsek"), Josef Duregger ("Duregger"), Fischer, Radel-Leszczyński, and Kohn.

As Chairman and Deputy Chairman of Bank Austria, respectively, Randa and Kadmoska insulated the BA Madoff Group from any attention and scrutiny within Bank Austria.⁵⁵ Zapotocky and Kretschmer oversaw BA Worldwide and its management of Madoff feeder funds. Hemetsberger, Scheithauer, Nogrsek, Duregger, and Fischer, in various capacities, were each intimately involved in the creation and supervision of Primeo Fund and its LA Business accounts.⁵⁶ Radel-Leszczyński assumed the leadership of BA Worldwide, working alongside Kohn to meet the demands of Madoff and BLMIS.⁵⁷ Kohn, for her part, played the crucial role—providing Bank Austria with access to a direct investment account at BLMIS.⁵⁸

⁵⁰ See Exhibit 6; Exhibit 5; Exhibit 7; Exhibit 8.

⁵¹ See Kohn Complaint at ¶ 58; Exhibit 6; Exhibit 8.

⁵² See Exhibit 10.

⁵³ See Kohn Complaint at ¶¶ 359-61.

⁵⁴ See Kohn Complaint at ¶¶ 221 and 384; Case Statement at p. 32.

⁵⁵ See Kohn Complaint at ¶¶ 132-33, 331, and 349; Case Statement at p. 35.

⁵⁶ See Kohn Complaint at ¶¶ 122, 136-37, 139-40, 346-48, 350, 353, 366, and 377; Case Statement at pp. 29, 32, 35-38, 45, 81, 83 and 102.

⁵⁷ See Kohn Complaint at ¶¶ 134 and 138; Case Statement at pp. 34, 36, 84, and 102; HSBC Complaint at ¶ 111; Exhibit 7; 25 September 2006 Facsimile from Radel-Leszczyński to Madoff, attached hereto as Exhibit 12; Exhibit 14; 2008 BLMIS Visitor Log, attached hereto as Exhibit 15; 2008 Internal BLMIS Feeder Fund Account Charts, attached hereto as Exhibit 16.

⁵⁸ See Kohn Complaint at ¶ 3.

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The BA Madoff Group created BA Worldwide—even though Bank Austria already had the infrastructure in place to service investment vehicles like Primeo Fund—and operated it as a Slush Fund. The Primeo Fund investment accounts at BLMIS netted BA Worldwide tens of millions of dollars. Due to the illicit nature of these proceeds, the BA Madoff Group distributed its profits to its members through an elaborate and complex payment cycle. This Byzantine compensation system allowed the BA Madoff Group to obfuscate the nature and origin of the illicit proceeds and maximized the profit shares for its individual members.

Thus, at all relevant times, BA Worldwide existed only to distribute BA Worldwide's ill-gotten proceeds from the Primeo Fund's BLMIS investment accounts.⁵⁹ These proceeds—totaling at least \$55 million⁶⁰—were distributed in two waves. First, the Trustee alleges that the BA Madoff Group distributed 10% of these ill-gotten proceeds to Bank Austria under a revenue sharing program between Bank Austria and BA Worldwide.⁶¹ The BA Madoff Group also used some of these proceeds to pay retrocession fees to Primeo Fund distributors, such as MediciFinanz.⁶²

Second, the BA Madoff Group distributed the remaining proceeds to bank accounts controlled by its members.⁶³ To execute this part of the Bank Austria Slush Fund Conspiracy, BA Madoff Group members acquired extra nominal titles as figurehead directors of Bank Austria affiliates—such as Bank Austria Cayman Islands Ltd. and MediciFinanz—to provide cover for this extra income.⁶⁴ The BA Madoff Group then directed BA Worldwide to transfer the illicit proceeds to Bank Austria Finanzservice GmbH ("BAF")—a company completely uninvolved in the management of the Primeo Fund.⁶⁵ At the BA Madoff Group's direction, BAF deposited these proceeds in bank accounts in Central Europe and in off-shore bank accounts.⁶⁶ Besides concealment, these circuitous transfers of money allowed BA Madoff Group members to avoid paying taxes.⁶⁷ The Trustee understands that the Austrian financial authorities are investigating various instances of criminal tax evasion stemming from this illicit payment scheme.⁶⁸

⁵⁹ See Kohn Complaint at ¶¶ 361-365.

⁶⁰ See Kohn Complaint at ¶ 359.

⁶¹ See Kohn Complaint at ¶ 357.

⁶² See Kohn Complaint at ¶ 22; and Case Statement at p. 39; Exhibit 8.

⁶³ See Carolina Burger and Angelika Kramer, *Ursula Radel-Leszczynski Erstattete Wegen Steuerhinterziehung Selbstanzeige*, FORMAT (25 May 2011), attached hereto as Exhibit 2.

⁶⁴ See Kohn Complaint at ¶ 364; 14 December 2010 Interrogation of Kretschmer, attached hereto as Exhibit 4.

⁶⁵ See Kohn Complaint at ¶ 397; Case Statement at pp. 14, 33, and 108-209.

⁶⁶ See Kohn Complaint at ¶ 397; and Exhibit 4.

⁶⁷ See Kohn Complaint at ¶ 365; Exhibit 2.

⁶⁸ See Exhibit 2; and March 10, 2011 Letter from Mag. Radasztics to Judge Nigg, attached hereto as Exhibit 19 (disclosing the 3 February 2011 Vienna Revenue Office Report on Radel-Leszczynski's voluntary tax charges).

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The Trustee has documents reflecting certain of these transfers from BAF to BA Madoff Group member Kohn.⁶⁹ Specifically, from November 2006 to July 2007, BAF wired various payments totaling approximately \$893,139 from its accounts at Bank Austria (account numbers 10510485700 and 51000003700) to accounts at Bank Gutmann in Vienna belonging to Eurovaleur.⁷⁰ Eurovaleur is one of Kohn's shell companies created primarily to receive Madoff-related proceeds.⁷¹ The Trustee is not aware of any business relationship between BAF and Eurovaleur. The Trustee, however, alleges that Kohn's Eurovaleur entered into a sub-advisory agreement with BA Worldwide wherein it would receive 20% of BA Worldwide's management fees generated from the Primeo Fund's investment accounts at BLMIS.⁷² This was Kohn's share of the ill-gotten proceeds.⁷³ The shares of the remaining members of the BA Madoff Group remain unknown in the absence of BA Worldwide's and BAF's bank account records.

CONCLUSION

The Trustee believes that the Bank Austria Slush Fund Conspiracy is a key component of the subject matter under suspicion in the Criminal Proceeding. In essence, the Bank Austria Slush Fund Conspiracy is the mechanism by which the BA Madoff Group distributed the illicit profits generated by Bank Austria's with Madoff. The Trustee's believes that certain additional suspects, potential witnesses, bank account information, and key documents would be relevant to the Bank Austria Slush Fund Conspiracy and could serve as important evidentiary leads in the Criminal Proceeding.

Recommended Additional Suspects for the Criminal Proceeding:

- Gerhard Randa
- Stefan Zapotocky
- Werner Kretschmer
- Peter Fischer

⁶⁹ See Bank Gutmann statements of Eurovaleur account, attached hereto as Exhibit 1.

⁷⁰ See Kohn Complaint at ¶ 397; Case Statement at pp. 14, 33, and 108-109; Exhibit 1.

⁷¹ See Kohn Complaint at ¶¶ 85, 217, 226, 306-315, and 373; Case Statement at pp. 13-14.

⁷² See Kohn Complaint at ¶ 359; Case Statement at pp. 14, 34, and 102-106; HSBC Complaint at ¶ 75; Exhibit 3; Exhibit 5; Exhibit 8.

⁷³ See Case Statement at p. 82.

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Bank Austria Slush Fund Conspiracy Accounts:

- BAF Accounts at Bank Austria: account numbers 10510485700 and 51000003700

Slush Fund Payment Recipients:

- Eurovaleur
- Vienna Portfolio Management
- Merck Finck & Co. (Germany)

Key Witnesses:

- Andreas Dobringer: Former Bank Austria employee responsible for the Accounting Department at BAF. He brought civil claims against Bank Austria for wrongful termination stemming from his alleged personal knowledge of the Bank Austria Slush Fund Conspiracy.
- Rene Riefler: Former Bank Austria executive who the Trustee understands has personal knowledge of the Bank Austria Slush Fund Conspiracy.
- Johannes Loritz: Former Bank Austria employee who the Trustee understands has personal knowledge of offshore accounts that received Slush Fund payments.
- Ralph Mueller: Former BAF Managing Director that transmitted payment information from BA Worldwide to BAF.
- Wilhelm Althaler: Former BAF Managing Director that the Trustee understands has personal information about the Slush Fund payments.
- Stefan Prihoda: Former Bank Austria employee and former employee of PrivatInvest Bank who the Trustee understands has personal knowledge of transfers from BAF to Panamanian accounts.

Banks Used in the Bank Austria Slush Fund Conspiracy:

- Bank Gutmann (Vienna): Account numbers 31343-18033 and 31343-80033 received 16 payments totaling \$893,139 from November 2006 to July 2007.
- Erste Bank: Accounts at this bank received Slush Fund payments.
- Raiffeisen Bank: Accounts at this bank received Slush Fund payments.
- PrivatInvest Bank (Salzburg): Accounts at this bank received Slush Fund payments.
- Panamanian bank accounts held by entities known as "Bartolo" and "Mausoleo."

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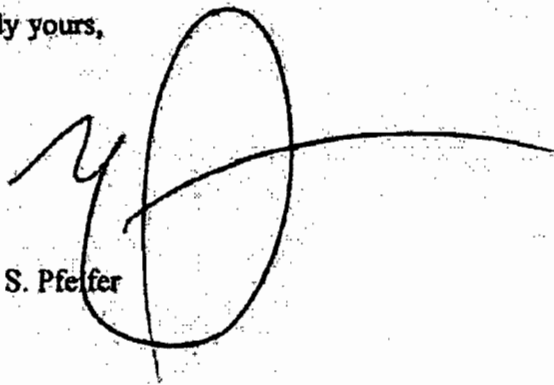
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Key Documents:

- E-Mails and Facsimiles from Radel-Leszczynski (under her married name, "Fano") from a MediciFinanz e-mail address to BAF directing outgoing payments to various Austrian banks in \$10,000 to \$30,000 payments.
- MediciFinanz E-Mails and Facsimiles from 2004 to 2006 alerting BAF to expect incoming Slush Fund payments.
- Wire transfer documentation from bank accounts controlled by BAF, BA Worldwide, and MediciFinanz.
- List of bank codes for banks that received Slush Fund payments.
- Internal BAF memoranda or correspondence regarding incoming payments from BA Worldwide or outgoing payments to the above-mentioned recipient banks, companies, or individuals.
- Accounting documentation at BAF.

The Trustee anticipates making further submissions to your Office regarding the Criminal Proceeding. In the meantime please feel free to contact me directly on behalf of the Trustee with any further questions regarding this Letter.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line extending to the right.

Timothy S. Pfeiffer

Prologue

Builders of the Great Pyramid

“These people are much more dangerous than any bank robber or armed robber, because these people, the white-collar fraudsters, are the most prestigious citizens. They live in the biggest and best houses and have the most impressive resumes. So when they commit fraud and scheme, they destroy companies and throw thousands of people out of work, and destroy confidence in the system.”

- Corruption hunter and Madoff whistle-blower Harry Markopolos

The enforcer lifted his hands and put them round the neck of the man in front of him, pulling him close until they were staring into each other's eyes. He didn't hurry, there was a message to be passed on from the big boss, and the man known as *The Butcher* was an expert at getting that across. A member of the firm was not towing the line: “If you start blabbing, we're going to break your neck.” A pause, then he pushed the other away slowly, straightened his lapels, and turned to walk off.

A snapshot not from a Hollywood movie, but rather an account of a moment at the heart of a criminal conspiracy that was officially the longest-running, largest-earning and most wide-ranging criminal racket the world has ever known. But the two men were not gang members in a Mafia underworld; they were both highly respected senior officials working at a bank in Austria. A bank currently targeted in a \$60 billion plus compensation claim from America that alleges it violated the Racketeer Influenced and Corrupt Organizations Act (RICO), a US federal law created to combat organized crime. RICO was the law used to jail drugs smuggler Howard Marks, but what does the RICO act have to do with a group of Austrian bankers?

The Butcher was the nickname for Alfred Simon, a bank director who was the right-hand of Werner Kretschmer, who in turn has been named as a key member of what the RICO lawyers described as the “Bank Austria Conspiracy”. Despite his high profile financial career, it was widely believed that Simon didn't really understand the markets, but he knew how to make sure people did what the boss, Kretschmer, wanted.

Of course, the real boss-of-bosses in this network was none other than Bernie Madoff, but he didn't want to be called boss. In fact, he preferred it if nobody mentioned his name at all, and he actively took steps to make sure as few people knew of him as possible. And he mostly succeeded, at least until that day on December 11, 2008, when suddenly the whole world knew his name.

[illegible]

But this book is not so much about Bernie Madoff, and more about the members of the Bank Austria Conspiracy, the people who were the enablers to his outrageous crimes, and the greed and corruption that helped him to commit the fraud which allowed him to steal more money from more people all over the world than any other thief. Ever. Where other investigations end with Madoff being incarcerated for several lifetimes and ordered to pay \$170.8 billion in fines, this story begins.

An extensive trawl of the facts buried among millions of pages of financial and legal statements proves that the case is far from over, that living among us are accomplices to Madoff who walked away from the rubble of his empire with reputations, and bank accounts, intact. At the time of writing this in the summer of 2013 Madoff, aside from his brother, is the only one jailed for the crimes which scythed through so many lives.

[REDACTED]

The answer, argued in this book and backed up with the weight of supporting documents, is that some did know very well. But like the optimists who chose not to question his methods, preferring instead only to concentrate upon the returns, they too looked away. The creed of '*Greed Is Good*', the killer line by Michael Douglas' character Gordon Gekko in the film *Wall Street*, was their mantra.

The claims that he acted alone and that the fraud started in 1996 are lies. They were lies in the court and they were lies earlier when he had been arrested and then interviewed during the *proffer*, the pre-trial negotiations when he was offered the chance of a limited immunity for his statements – but only if he were to tell the truth. But he did not tell the truth, and from the moment he claimed he had acted alone it was clear he was not going to co-operate. The truth was not something that would ever be easy to find in the Madoff case.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Why, then, has no one else been convicted? The answer lies 4,000 miles away from Madoff's New York offices where a paper trail and the few who are prepared to talk points to a conspiracy of over two dozen potential suspects – the Bank Austria Conspiracy. A group which had members with the financial smarts, political connections and criminal energy that subverted entire banks and finance houses, so long as the Madoff Midas machine kept on filling up their own pockets with loot. What this book proves is that Bernie Madoff had a network of people who knew very well that his scheme was crooked, but for selfish reasons simply did not care as long as others would end up footing the bill. People with a moral duty to raise the alarm – people still carrying on their trade in the banking world or who have retired with their riches – and are still living the high life while their erstwhile hero expires slowly behind bars, and their victims are left to suffer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The paths of the two, journalist and informant, crossed again in April 2013 when the informant was ready to hand over paperwork, material that began to reveal the entwinement of Bank Austria with the collapsed empire of Madoff. With branches all over the country, Bank Austria is as much a part of the country as the Alpine vistas, clear blue lakes and picture postcard villages. It is part of the country's business and economic life, but also a major part of the political landscape. For years it had the red wave as its symbol, but denied this was a symbol of its link to its socialist roots. Yet Bank Austria was and still is as always strongly allied to the Social Democratic Party of Austria, the *Sozialdemokratische Partei Österreichs*, known locally as the 'Red Party', or SPÖ for short.

What the pre-Christmas informant wanted to reveal when he resurfaced in Spring was the bank's involvement in aiding and abetting the Madoff fraud, and how the key players in it had been 'protected' ever since his stunning fall from grace. With the

A cover up.

[illegible][illegible][illegible]

[illegible]

his concerns about Madoff – and Bank Austria’s ill-fated trading with him – and some were addressed to him by his nickname *The Last Mohican* – or TLM as he came to be known. This was clearly a term of respect. He had a good rep. It was meant to imply he was the last hero, the last fighter still standing.

[illegible]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	

[illegible]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Back at the Bank Austria offices pressure increased for him (TLM) to sell Madoff's products to clients. A month before, in September 2008, there had already been pressure of a different kind that TLM had survived. Bank Austria and also other European banks had run into liquidity difficulties and were in desperate need of cash.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The deals were all detailed in TLM's paperwork, but it did not win him the plaudits that might have been expected anywhere else. TLM clashed frequently with Bank Austria managers like Friedrich Hondl, who in turn was under Gernot Heschl.

Heschl as a department head was one step down from a board job, reporting to the Bank Austria Director Regina Prehofer. He was also on the supervisory board of Pioneer, and therefore had the job of overseeing the Pioneer fund's board of directors. Pioneer had moved to bring Heschl onto the supervisory board believing he was the way to access the big accounts in Bank Austria through his international corporates job. But it was really a conflict of interest.

In short, at International Corporates he was dealing with Kretschmer as the member of the board for Asset Management and Pioneer and Private Banking; and therefore dealt with him in accepting products for his key accounts. But he was then doing deals at Pioneer that he was supposed to be controlling in his supervisory role.

That meant that he could not really control those deals properly. If, for example, Kretschmer had told him there was no fee to get the business, he would have not been in a position to act against himself. And the allegation is that Kretschmer often waived the fees to get the business. Pioneer also invited big clients for trips abroad together with key bank personnel. If Heschl *were* to go on these trips as a key bank

member, he was then the person that would have controlled whether the offer had been wrong.

There is no argument that Heschl was well known and respected in the bank and a success in his role, but as a credit man, not as a worker in the securities business, where he quite simply was out of his depth. He was by all accounts not one of the greedy bankers, but he wanted to be a success and that meant not rocking the boat. And so another opportunity to have limited Madoff's influence in the bank was negated.

The bank insider added: “Hondl claimed the credit for bringing in the money, he didn’t pass it on, far from it. Instead, he continued to pile the pressure on for more results. On October 15, 2008, Hondl needed a new report because there was a management meeting. It was an emergency meeting; I don’t know what it was about in detail. It was supposed to be at 9 or 10 o’clock. Hondl told him (TLM) he needed some figures for the board and there was a row. Our mutual friend (TLM) told him that he had three important meetings that day that were almost certain to bring in a lot of money for the bank. He was talking about several hundred million Euros. Big customers.

“He said he didn’t have time for the statistics – business came first. After business he could do the statistics. Hondl said he didn’t care about the business – he was very career minded, and he started shouting at him (TLM). I remember he told him, ‘What do I have to do to make an asshole like you clear off?’ [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

* * *

With the support of its political partners in the SPÖ, Bank Austria simply grew and grew. But then again it had no choice. Shortly before the takeover of Creditanstalt, it was in all likelihood not even really a bank in the legal sense of the word, as it no longer complied with the required minimum capital requirements. The absorption of Creditanstalt had helped; it managed to fill the black hole, but as with Konsum the bank and their political partners had only delayed the problem to a later date.

[REDACTED]

Because the 'Z' had the backing of red Vienna, it meant that in some business areas they did not have any competition. There was simply no point in potential rival banks bidding for business from the city council that they knew they would never get.

The Länderbank on the other hand was a national player. It even had some international links and was the number two bank in the country since being founded in 1880. But despite its size the other thing about Länderbank was that if there were any financial scandals to be involved in, you could be sure that Länderbank had a role in them somewhere. It was constantly being bailed out, and what it was doing was not just verging on the criminal, it *was* criminal.

It was number two in size, but for criminality and bad business deals it was a clear number 1.

The 'Z' was also not without its scandals, but by and large they paled in comparison with Länderbank. One notable exception was when its London representative in 1986 was involved in the so-called Guinness affair. The row centred on the takeover by the

brewery firm of the Scottish company Distiller – makers of Johnnie Walker Scotch and Gordon’s gin, among other things. The ‘Z’ was involved in a plan by the financier Sir Jack Lyons to manipulate the share price. The ‘Z’ suffered losses through the manipulation, of course, but this was paid back to them by Guinness as an advisory fee, a favourite trick of Austrian bankers through the ages. In fact, as this book was being written, Austria’s Bank Medici majority owner Sonja Kohn was in court in London denying that she had been paid fees for fictional ‘advisory’ work by Madoff. The work that the court heard had mostly been cut and pasted from other sources had earned her a cool \$27 million in fees.

In the Guinness affair the trickery was discovered, and the key players, including Sir Jack Lyons and Guinness boss Ernest Saunders, found guilty and jailed. The only reason that the 'Z' did not end up suffering substantial penalties was because they agreed to give evidence on behalf of the prosecution, and delivered their partners to the prosecution on a plate. That and the fact that the 'Z' overseas bureau boss Romuald Riedl also had to testify before court, and then go to the Bank of England where he showed a limited experience in international share dealing and had to apologise for his incompetence. [REDACTED]

[illegible]

took over Länderbank but they also got the Länderbank boss, Gerhard Randa, who a few years later emerged as the ultimate power at the newly formed financial giant of Bank Austria. Gerhard Randa, who ruled with an iron fist and who in a letter of complaint from American officials in 2012, was to be named as one of those that should be treated as a “suspect for criminal proceedings over the Madoff fraud”. In other words, he was a leading member of the alleged Bank Austria Conspiracy.

[illegible]

[illegible]

The AVZ, among other things, is the guardian of the pensions of the city's civil servants making it a powerful financial heavyweight in its own right. It was also a player that until now has remained in the background, but one which also had a major role in the Madoff scandal as the TLM papers were later to show.

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

The Russian losses because of the rouble crisis in the second half of 1998 were eventually settled on the books and a victim was needed, someone whose head needed to roll, and that victim was Peter Fischer, 58, who was to take the blame. He was Bank Austria's director of treasury, and a man who was later to be one of the alleged members of the Bank Austria Conspiracy. He was fired, but with a pay-off that he would frequently boast was 100 million Schillings (€7.27 million) to encourage him to 'go quietly'. And the scandal did not hit his career so badly either; after all, everyone knew he was not really to blame. So he ended up on various supervisory

boards and later was to turn up again in other scandals – the most notable of which was in the Bank Austria Conspiracy that had Madoff among its plotters.

But AVZ's problems were not over with the sacrifice of Fischer, after the merger with the Germans HVB shares plunged in value, and panicked HVB managers rushed to the 'safe haven' of UniCredit against the wishes of Randa, who resigned. The sale to UniCredit left the AVZ trust with a 0.44% stake in UniCredit worth just €27.6 million, and the city of Vienna responsible for the liabilities of around €9.7 billion. In short, the value of the shares had plummeted, but the liability had gone through the roof.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

When merger talks were first mooted between 'Z' and Länderbank, Randa had bitterly opposed the merger, because he wanted to be at the top of the new institution. For years, the talks had stalled on his demand, and by the start of the 1990s they were still stalled when Länderbank needed rescuing again. It was clear then to Randa that he no longer had any choice but to allow the 'Z' to swallow his ailing Länderbank, so he agreed, but only on the condition that when the 'Z' boss Rene Alfons Haiden stepped down, he would take over. In the meantime, he would be content to be vice president.

Many Länderbank staff did lose their jobs or were demoted, but Randa made sure he not only remained firmly in place in the new bank, but that his eventual promotion was carved in stone. And not just his, but also the positions of a few trusted deputies that he knew could be relied on, people like the later to be disgraced Peter Fischer, or Stefan Zapotocky, 61, the former Bank Austria director and Austrian Stock Exchange boss. The man who was ‘Businessman Z.’ that met TLM in the hotel in 2008, and a man who like Randa and Fischer was to be named by the Americans as “one of the four additional suspects for criminal proceedings”. People who were just some of the former Länderbank team that were later to be at the heart of the Bank Austria Conspiracy.

103

[illegible]

[REDACTED]

In contrast to Länderbank, the 'Z' was a relatively healthy institution when the merger happened in 1991, a merger that was the only way to stop Länderbank again sinking into its swamp. The 'Z' was clearly the stronger partner on every front whereas the Länderbank, under Randa, had many serious skeletons in its cupboard, and was effectively so badly in need of saving that only a cash transfusion from the 'Z' could possibly have rescued it.

Exactly how many skeletons was something that only became apparent after the merger of the Länderbank and the 'Z', when the real problems within the Länderbank came to the fore. It was also at this time that a certain Austrian woman returned from America promising vast profits though exclusive access to her 'good friend' Bernie Madoff, a man who was a Wall Street 'guru' with an uncanny ability to predict market movements. She could not have struck at a better time. The newly created Bank Austria was suffering massively as a result of the Länderbank problems. Admittedly, there were no new problems, but the problems that were known about turned out to have been far worse than had first been believed.

[REDACTED]

[illegible]

They both knew that there was only one organisation that was cash rich enough to rescue Randa and Bank Austria – their arch rivals at the ÖVP-controlled Creditanstalt. The takeover that followed was a massive victory for Randa and for Klima, who together masterminded the triumph of red Vienna over the rest of Austria. Franz

Vranitzky's time as Chancellor was numbered, and his heir-in-waiting, Viktor Klima, found his road to the Chancellorship was secured.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

Yet offers that would have worked out well for Austria were constantly rejected. Austrian media and Austrian politicians encouraged public protests when the Swiss made a serious offer in 1994 for the bank. The president of the National Bank of Austria, the *Oesterreichische Nationalbank* (OeNB) was Maria Schaumayer, a former ÖVP politician and Creditanstalt employee that had left the bank because she was not getting promotion. She declared publicly that no Swiss flag would ever be allowed to fly over the Creditanstalt. Numerous other foreign interests in the Creditanstalt were likewise rejected thanks to opposition from the Creditanstalt boss Schmidt-Chiari, and the industry newspaper *euromoney* commented that he acted as if it was his own bank – and not as if he were a trustee responsible for selling the assets of the majority shareholder – which is what he really was.

	[REDACTED]	
	[REDACTED]	

The control of these (company network) gave Randa continued economic influence, and also the opportunity to put SPÖ people into strong positions through his continuing job carousel. Director positions were usual then as political rewards, and still are today, and this in turn helped to ensure control of the firms where the political appointees were placed.

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On December 4, 2012, a hand delivered letter was sent to the Vienna-based public prosecutor Michael Radasztics in charge of looking at Madoff's Austrian connections.

It was written by Timothy Scott Pfeiffer from the American legal firm BakerHostetler, the firm tasked by the trustee of Madoff's estate to try to recover the money he stole. It was an attempt to breathe new life into an investigation in Austria at least that was not even going slowly, it was an investigation that seemed to have died completely.

The man who wrote it, Mr Pfeiffer, has special responsibility of the foreign part of the legal case. And he is the *lead counsel* in the trustee's RICO case against, among others, Bank Austria, its current owner UniCredit, and Sonja Kohn.

The letter did not hold back, saying that its continued investigation of Bank Austria "has uncovered evidence that a group of high ranking directors and officers at Bank Austria conspired to profit from Madoff's fraud". It alleged that they had worked together for over a decade to line their own pockets by setting up a complicated network of companies and transferring the money between them "to obscure their nature and origin" and "avoid paying taxes".

BakerHostetler might be the most high-profile of the lawyers pursuing Madoff's Austrian connections but they are not alone in their frustration at getting information out of officials in the Alpine Republic.

Another lawyer seeking to recover funds for Irish investors in the Bank Medici managed Thema Fund said: "We tried to follow the link back to Austria, but it was like walking into fog. You just couldn't see the way to go any further."

One might have expected more from Austria's Madoff prosecutor-in-chief Radasztics. He has a reputation for pursuing cases against high-profile opponents, like his case against the British banker Julius Meinl. In fact, Meinl was even remanded in custody in an Austrian jail together with alleged drug dealers and hardened criminals over what Radasztics claims is a €5 billion investment fraud. Jewish Mr Meinl, whose family moved to London to escape the Nazis, was only freed by the payment of a world-record bail bond of €100 million. To put that into context: Bernie Madoff only had to pay one tenth of that sum to get bail in America for what at the time was alleged to be a \$65 billion fraud.

But Meinl is strongly linked to Austria's ÖVP, the black party, and Radasztics has his links with the red SPÖ side of the *Proporz* family. His reputation was built on the pursuit of those on the right of the political spectrum, the ÖVP, the BZÖ and FPÖ-linked cases. He was given the Madoff assignment by Werner Pleischl, Austria's Chief Prosecutor (*Leiter der Oberstaatsanwaltschaft STA*). Pleischl is strongly tied to the SPÖ, and since then, as BakerHostetler politely hinted, the case had gone nowhere.

According to Mr Meinl, that should come as no surprise. On his release from investigative custody he pointed out: "The Austrian legal system has the power to do with you whatever it likes."

[REDACTED]

Such delays might explain why the Madoff lawyers at BakerHostetler felt it necessary to write to the prosecutor. In the letter they pointed out that there was clear evidence that a small group of directors and senior officials at Bank Austria had

entered into a conspiracy to “enrich” themselves at the “expense of investors”. They had laundered tens of millions of dollars of money stolen by Madoff, and paid it to bank accounts that they owned and controlled, continued the complaint.

It even named those to blame like Randa who, it claimed, when he had taken over the bank had “sought to implement an aggressive expansion of the bank’s presence outside of Austria, including in New York.”

To do that he had used the connections of Sonja Kohn, who through her New York company Eurovaleur had invited Randa and other senior Bank Austria executives to New York on numerous occasions to meet Madoff and discuss setting up the scheme. As the trustee put it, Madoff “needed fresh investment capital, but the criminal nature of the business necessitated a high level of discretion”.

Madoff depended largely on agents to solicit investments, people who targeted in the main high net-worth individuals. He avoided sophisticated institutional investors, yet he made an exception for Bank Austria, making it clear that this would *only* work if Kohn would continue to act as the go-between. And Bank Austria proved to be the perfect partner, with the infrastructure and clientele to funnel large amounts of money to Bernard L Madoff Investment Securities (BLMIS), and the capability to create investment vehicles that could be wholly-invested through BLMIS such as Primeo Fund, that was to be the model for so many other later clone funds.

The confidential letter not only named Kohn and Randa, Zapotocky, and Fischer, but also the Bank Austria official that was given the job as CEO of Bank Medici, Peter Scheithauer, 58, another former Länderbank player, and the former Communist-turned-veteran-investment-banker Wilhelm Hemetsberger, 55, who it claimed had been involved in setting up the strategy that was the basis of the Bank Austria Conspiracy in meetings with Madoff in New York.

Once up and running the network of people had been expanded to include others like the man who commissioned reports that exposed Madoff, Friedrich Kadrnoska, 62, and who then ignored them, and Randa’s protégé who was later at the centre of the web, Werner Kretschmer, 49, the offshore planners Harald Nogrsek, 55, and Josef Duregger, 57, who both worked at Bank Austria *and* the Medici feeder funds network, and of course the secretary that was to earn millions after she was reinvented as a hedge fund expert, Ursula Radel-Leszczyński, 57.

That is 11 people. In its 190-page RICO indictment to court the trustee went further, there were 22 people revolving around the Bank Austria hub including Sonja Kohn and those already named.

The new names included the shadowy figure of Kohn's husband, Erwin, as well as Kohn's three fixers, the UK-based Daniele Cosulich, and the Austrians Robert Reuss and Susanne Giefing, there was Bank Medici's willing servant Andreas Pirkner and his successor Andreas Schindler, and two senior figures from Bank Austria's eventual owner UniCredit, CEO Alessandro Profumo and deputy chairman Gianfranco Guty. And there was Bank Medici financial wizard Werner Tripolt, Kohn's Bank of America friend and later employee Helmuth Frey, and Austrian financier Manfred Kastner.

And in the TLM files there are another 11 identified, people whose names appear there but who until now have not been identified in the case, but people that according to the evidence of the TLM paperwork should at least be questioned, and that includes the bank's chairman, Willibald Cernko. There is also Bank Austria's James O'Neill and Alfred Simon, the president of the Primeo Fund Family; Johannes Koller, the assistant of Zapotocky who moved over from Länderbank to create many of the contracts and prospectuses for the Madoff funds; as well as the UniCredit director Erich Hampel. There is also the man who allegedly introduced Kohn to Randa at Bank Austria, Wolfgang Feuchtmüller. And Nikolaus Hetfleisch – the person responsible for selling Madoff's products in the Bank Austria private banking unit and the brokerage arm of the asset management company. There was also the Primeo director's Karl Kaniak and the SPÖ hardliner Hannes Saleta, and Nigel Fielding. Kaniak was also at BankInvest (4) involved in spreading around the Madoff fees and Fielding at HSBC. And finally, there was Bank Austria's often used legal expert, Christian Hausmaninger.

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██████████ And there was the Telekom scandal in which 96 Telekom Austria managers earned €9 million when the share prices were allegedly manipulated by directors including Telekom boss Heinz Sundt. The manipulation was paid for by funds that passed through Hochegger's hands.

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Recently separated, she Maria Rauch-Kallat) liked the then 44-year-old 'Count', and they were later to become engaged and married, and locals started calling her 'The Countess'.

It was not long before Mensdorff-Pouilly was charged with getting a kickback for his role in a deal to buy pandemic flu masks by negotiating an €8 million euro contract for Dräger Medical Austria GmbH with the Austrian health ministry. His wife had signed the law in 2006 allowing for stockpiles of flu masks that he then helped to sell.

When Siemens agreed to pay a record \$1.34 billion in fines after being investigated for serious bribery, one of the key players in the affair was found to have links with Mensdorff's Brodmann Business.

In America, Mensdorff was investigated over allegations he had been paid €2.2 million to provide holidays and gifts to those involved in the political decision over the awarding of TETRON contracts to the benefit of Motorola.

Telekom Austria had paid him €1.1 million for an 8-month consultancy as well as paying €170,000 for the right to stage a hunting party on his estate.

And police who raided his property in 2008 found evidence of payments of €1 million from Austrian oil giant OMV to his company MPA, and another €500,000 to Brodman, payments the Green MP Peter Pilz said were for bribes in connection with the take-over of Romanian firm Petrom, the largest oil and gas producer in eastern Europe that was reportedly sold well under its market value to the Austrians.

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Libro was the third biggest bankruptcy in Austrian history when it folded in 2002 with debts of €380 million. It turned out that the firm had launched onto the stock exchange in 1999 when it claimed to have equity of €640,000, when in reality it had a negative position. It had even paid a special dividend of €31 million shortly before going public, a payment that given the real situation on the books should never have happened. Libro then went on an aggressive expansion course, buying German book chain Amadeus and investing heavily in online shopping. It seemed a clear cut case of the books being fiddled. It was also a text book example of prosecutor manipulation by people closely linked to the SPÖ. It was handled by prosecutors in Wiener Neustadt, who looked into the actions of Libro's boss Andre Rettberg. They discovered he had managed to take the money out of the company and launder it through a complicated network centred on companies owned by a businessman named Friedrich Lind. They found that Lind and two of his managers, August Andre de Roode and Falco Müller Tyl, had not only helped to wash the money before handing a percentage back to Rettberg, they also found that Lind and Rettberg had met "on at

On the basis of the evidence, charges were prepared against Lind, his two managers, Rettberg and others. And because of the public interest in the case it was also reported up the chain of command to the powerful senior prosecutor in Vienna, Werner Pleischl. From there it went to the ministry. The permission to continue the case against Rettberg and others was approved. But permission to file the charges against Lind, de Roode and Müller Tyl was withdrawn.

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In the Noricum scandal a group of politicians, including interior minister Karl Blecha (SPÖ) who is now president of the SPÖ Pensioners' Association, as well as former Chancellor Fred Sinowatz (SPÖ) and foreign Minister Leopold Gratz (SPÖ), were accused of helping Austrian firm Noricum to supply long-range artillery guns to Iraq. The Austrian ambassador in Athens, Herbert Amry, was the whistle-blower that exposed the scandal and confided afterwards that he feared he might be killed. He later died in mysterious circumstances, and his body was speedily cremated. The only politician to be punished was Blecha, who got a suspended sentence for suppressing evidence.

BAWAG was the SPÖ-controlled trade union bank run by Helmut Elsner, who paid himself millions in bonuses at the same time as he hid a €1.7 billion loss from risky currency exchange deals with cash fiddled from trade union members. The massive losses were made in the late 1990s, mostly run up with wrong-way bets on the Japanese yen, but Elsner managed to bury it and continued to cash in until the US futures broker Refco Inc., a BAWAG affiliate, collapsed in 2005. It was only during the enquiry that followed Refco's collapse, an enquiry that took place in the US, that the scale of the problem at BAWAG was revealed. Former Chief Executive Officer Elsner had allowed New York-based investment banker Wolfgang Flöttl, son of the deceased BAWAG-CEO Walter Flöttl, to speculate millions of Euros from BAWAG in what were essentially unauthorised transactions.

Elsner was jailed for 10 years, but was released early. In his case it was on health grounds, after which he was snapped dancing in the early hours of the morning with an unknown female – not his wife – and then snapped walking with a newspaper towards a sun lounger at the four-star *Waldhof am Fuschlsee*.

He claimed he was being used as a scapegoat, but during the trial it emerged that his wife Ruth had managed to buy a luxury €3.5 million penthouse in the Austrian capital's posh first district from the bank for just €474,000, and in the year 2000 he had paid himself €581,000 in bonuses at the same time as the Austrian Trade Union Federation the ÖGB had been forced to use everything they owned as a guarantee to keep the bank he had helped to ruin afloat.

In 2003, when the scandal was known to Elsner, if not to others, he had paid himself the €5 million he was due to get when retiring in advance, reportedly to avoid paying

tax. Or was it that he knew the bank's problems would eventually bring it down?

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The changes in the criminal procedure law that allow such abuses to happen actually only took place recently, but had its roots in the 1980s when a number of politicians ended up with criminal convictions, and most of these politicians were from the SPÖ. In working out how to avoid this happening again, it was clear there were advantages to being able to influence the criminal procedure, and that could best be done by influencing the gathering of evidence. Once the evidence is already there it's harder to control the direction things go, but if the evidence was never there in the first place, it is far easier to keep a lid on things.

Evidence that this is exactly what happened can be found in a document presented to Austria's Parliament that detailed a meeting at the offices of the Viennese law firm owned by Gabriel Lansky in 1997. Lansky is a partner in the law firm Lansky, Ganzger & Partner that is deeply tied to the SPÖ, and among those present at the unorthodox meeting were Senior Prosecutor Maria-Luise Nittel, the right-hand of Werner Pleischl, the Senior Prosecutor.

Of the four Senior Prosecutor's in Austria, (Vienna, Innsbruck, Graz and Linz) arguably the most senior is the Vienna boss Pleischl, a close friend of the Innsbruck boss Kurt Spitzer and the Graz leader Thomas Mühlbacher, who are together in the SPÖ-linked BSA.

The document shows quite clearly that it was the intention of those at the meeting to get more SPÖ influence within the Austrian justice system. The agenda talks

specifically about how to get more '*comrades*' into the legal business. The significance of this on the justice system cannot be underestimated, especially now that the Justice Ministry (controlling courts and prosecutors) and the Interior Ministry (controlling police) are both in ÖVP hands. Yet despite that the prosecution is populated with people linked to the SPÖ that do not change regardless of who are their political masters. Political party affiliation is not grounds for dismissal. So because they are not politicians, but only under the influence of politicians, they stay in office for years on end. Their influence also remains for years, regardless of election results.

And crucially, while police sympathies have in the past lain with the ÖVP or the FPÖ, the fact is that the police and with that the interior ministry have lost their independence in investigating crimes. That control vanished with the 'reforms' of January 1, 2008, that passed the power over to the SPÖ dominated STA.

[REDACTED]

Pleischl, the Chief Prosecutor, is close to Lansky and, like him, lies very much with the SPÖ. Both Lansky and Pleischl, according to insiders, are members of the BSA. And Pleischl was the man that chose Radasztics as the Madoff prosecutor. It was also Pleischl who was accused of burying and concreting over evidence in the Natascha Kampusch case when it was discovered that the mistakes police had made could have seen her freed years earlier. Mistakes that had been made in the time of the SPÖ Interior Minister Karl Schlögl. But the relationship between the two goes much deeper than that. The pair regularly play tennis together, and Schlögl is also now the mayor of the community of Purkersdorf on the outskirts of Vienna where not only does Pleischl live, but where his wife is the deputy mayor.

It was Pleischl that authorised the closure of the first investigation by the Vienna public prosecutor on November 15, 2006, three months after Natascha's escape - saying that this was justified by the death of the man accused, Wolfgang Priklopil, and "deficient evidence" to look for anybody else.

With a grip on the prosecution, it meant that the investigative competences that were previously the responsibility of the court were moved over to be the responsibility of the prosecutor. Most important of those was the role of the investigative judge that in

certain cases watched over and steered an investigation. With that job now done by the prosecutors they not only governed the gathering of evidence, but the evaluation of that material once it was collected as well.

That was the plan, and from the reforms of January 1, 2008, that is exactly what happened. The investigative judge was abandoned and the first investigation is now carried out by the prosecutor. But more than that, the prosecutor also has more power than the investigative judge, for example in doing the interviews themselves with suspects or witnesses. Interviews that were once done by police detectives. Before the 2008 changes that was not an option. If prosecutors decide to waive that right police will still do it, but the prosecutor can still choose who the police are allowed to interview: In short, detectives can only do interviews with people the prosecution permits. The political system in Austria made it possible for the SPÖ to infest the prosecution system with its members, it then allowed prosecutors to control and steer every detail, and then made it the law to force prosecutors to report back to their political masters to make doubly sure they were towing the line.

It may explain why so many leads in the Bank Austria Conspiracy remain dormant, why so many key players have NOT been interviewed, or at least not properly interviewed, expert witnesses have been given only a limited brief, and even more limited background, and why the questioning of those that were called to task led to so little happening.

One only needs to look at the main economic crimes in recent years to see the volume of investigations against the ÖVP, the FPÖ and BZÖ. Cases involving the right dominate the media, five former politicians from the former right-wing government coalition of the People's Party (ÖVP) and Freedom Party (FPÖ) are currently embroiled in corruption and abuse of office scandals in probes being carried out by the SPÖ dominated prosecution. The SPÖ, the party that dominated newspaper headlines over corruption a decade ago, are more fortunate – their cases are simply buried, and concreted over.

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Another prominent *Selbstanzeige* was made by one of the accused in the Bank Austria Conspiracy, when Ursula Radel-Leszczynski, Madoff's contact person for the day-to-day business, turned herself in over an undeclared €1.8 million that she had earned between 2007 and 2009. She claimed that the money was from her work as a hedge fund specialist working for foreign investment companies including Nomura, Fortis and HSBC. She was paid the market rate for her services, she claimed. The money had been deposited in Lichtenstein where it came under the spotlight over suspicion of money laundering and her access was blocked. She said that as a result, acting on the advice of her friend Prince Michael of Lichtenstein, she had set up a trust named adbank, which was liquidated in 2009, and from there the money was transferred to a life insurance policy. She claimed that she had only realised after a check by her accountant that this 'policy' needed to be declared in Austria. As a result

All that is needed is a quick phone call before tax officials close in so that the person has the time to make a *Selbstanzeige*. But why would that call be made? One factor is party donations, which in Austria are at the bottom of every trough. Managing an entire country and carving it up to their own advantage is an expensive business for Austria's political parties – it requires a lot of money, and that can only be made under the guise of party funding. In almost every district there is a party office. In each of these offices there is usually a full-time office manager together with secretaries and a company car. It is a powerful argument as to why party funding is exempt from all the other transparency laws. It is why Austria has a party funding law different to every other western European country. There is almost no punishment for any abuses and it protects both the party and the donor. It is a law that makes almost *everything* possible.

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A good example (of a sold passport) is in the Kazakhstan affair. In this case a residency permit was granted to Kazakhstan's multi-millionaire ambassador to Austria and OSCE representative Rakhat Aliyev, despite the fact that the government had already reached its quota for the year. It was rushed through when it was revealed his diplomatic immunity had been lifted, after all he was a man that had a substantial

That was the Interior Ministry that should have been requesting an order from the Justice Ministry and should have been investigating him on charges of a suspicion of kidnapping, tax evasion, forgery, bribery, money laundering, and twice conspiracy to murder. Instead it later emerged that Aliyev, who banked at the Vienna branch of the Salzburg Privatinvest Bank had managed to distribute over €100 million to accounts around the world.

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In 2009, Franz Katzmann accused the region's vice governor Franz Steindl of abuse of office after he ordered local councillors to go ahead and approve the building of an old peoples' home in the village of Strem. The result was an economic disaster that almost bankrupted the region. Local civil servants had realised early on that without an agreed fee in advance the project was economically unviable. In line with the GRECO ruling Katzmann passed the matter on to prosecutors, who in line with their rules passed the case onto the justice ministry. That of course was no surprise, as mentioned, prosecutors are obliged by law to make sure that all cases with political links are passed on to the ministry. They need to get approval for the next step. A short while later, prosecutors announced no charges were to be brought. There was no need to give any reason – although they did confirm that the case had indeed been dropped.

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Nothing illustrates that more shockingly than the case of World Vision, an international charity that helps children in the Third World by linking them with a sponsor that agrees to pay a small amount to cover the child's education, food and accommodation – and to give them a chance in life. But a scandal in Austria turned out to be a disaster for World Vision, active in 94 countries, after the story was reported all over the world. It was a disaster for the charity that had done and still does so much good. And it was also a disaster for other similar adoption based charities.

The Austrian journalist Kurt Kuch had been given a tip-off about the affair before it was public and was the first to write about it in Austria after the complaint from the parent company in America was filed with Austrian prosecutors. World Vision had reported its Austrian branch and the handful of staff employed in Austria for “failure to demonstrate acceptable standards” in connection with \$1.3 million in missing funds.

That money should have been passed on to the main charity. The allegations were explosive material.

Tina Krones-Taurer had become World Vision Austria director in 1995, and had quickly replaced key staff and board members with friends. Her husband, Wolfgang Krones, was the right-hand of Karl Habsburg, an Austrian politician and a member of the European Parliament for the ÖVP. Habsburg was also on the Board of Directors of World Vision Austria and also at the Pan Europa movement. Between them the married couple had managed to divert over one million American dollars of money

destined to help children in Third World countries for their own purposes which included funding the political campaign of Habsburg. He claimed to know nothing about it, but among the things the stolen money purchased were 10,000 election campaign letters sent to voters with his signature on.

Putting together a story, Kuch contacted the director of the charity, Tina Krones-Taurer, then aged 38, by telephone, and she agreed to speak, but not on the telephone. He said: "She told me to come to her office straightaway, and she would explain everything." Fifteen minutes later he turned up at her office and was ushered inside to speak to her. But he said that they had only just sat down when the door opened and two men in suits walked in and asked her if they could "have a quiet word" with her.

The men were special agents tasked with tackling economic crime – and before Krones could speak they had arrived to whisk her away. Was it a coincidence that they took her away just as she was about to speak to the journalist? Had they heard his telephone call? No charges were ever made against Habsburg after he claimed to have been unaware about the donations.

In fact, Karl Habsburg only reluctantly agreed to refund the €30,000 it could be proven had gone his way, and only after the scandal widened significantly when his father Otto Habsburg, then aged 86 and the last Crown Prince of the former Habsburg monarchy, went to his son's defence, and accused critics of treating the former Royal family like the Jews were treated during the war. As Austrian political commentator Anton Pelinka pointed out: "With this statement the Habsburgs were claiming that anybody who identifies the theft of charity money is no better than the Nazis. Yet the Habsburg's that started a world war and have millions of deaths on their hands are miraculously transformed into persecuted Jews?" Karl Habsburg certainly didn't feel any need to step down, and when the ÖVP announced they would not be using him again for the next election he even set up his own political list – the Christian Social Alliance which, however, failed to get him elected.

In true Austrian fashion there were the usual delays in the court case, but with the international outrage at the misuse of charity money destined for children to fund a political campaign, it was inevitable that just for once somebody needed to end up in court – and six years later that happened in September 2004. Tina Krones-Taurer was jailed for three years. The following year in June 2005 Kuch had arranged to meet a contact in a Viennese cafe for an interview and was amazed when he walked inside to see Krones-Taurer sitting inside laughing and drinking coffee with friends. The same

woman who should have been in prison. He called justice officials and eventually reached the judge in the case who replied, when confronted with the fact: “Jesus, something must have happened.” What had happened was that the courts had ‘forgotten’ to issue the paperwork necessary to see her jailed. But when they went to correct the mistake, she vanished.

It was only two months later that she was ‘found’ at her villa in the VIP resort of Baden. The justice ministry and the regional court admitted there had been a misunderstanding, caused by a shortage of personnel.

Was that the end of the affair? Not really. A few months later at the start of 2006, Kuch was given a telephone number by an informant, and told that it might be interesting to call. At the other end of the line – Tina Krones-Taurer.

He said: “She seemed to find it amusing that I called. I asked her why it was that I was getting sightings of her all over Vienna when she should be in jail. She told me, ‘You should realise, Mr Kuch, that there are many different forms that being in jail can take’.”

The final call to the court officials confirmed she had been allowed to serve her sentence in the community and they added: “It was not our decision. The instructions came from the Justice Ministry.” And what did the justice minister Karin Gastinger have to say: “Prison officials decided that the conditions could be relaxed with this woman because she did not represent a risk of flight.”

The convicted fraudster who had already been on the run was effectively free, with the blessing of the justice ministry. It’s not the only example of Austrian courts forgetting to fill in the paperwork to see those convicted end up in jail, or where convicts representing a clear risk of flight ending up serving their sentence in the community. It is also not the last.

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In this unlikely setting of the bourgeois elite, Proksch and his socialist pals met regularly at Club 45, their own club formed in two rooms on the first floor of the Demel's premises. There they drank expensive whisky, smoked cigars and chewed over events political and financial that impacted, or could impact, on them and their bank accounts. Together with Proksch, Club 45's other founder was Hannes Androsch, the former SPÖ finance minister and the man set to be the country's next leader before he left under a cloud to claim his automatic top job in industry – which for him was as the CEO of the Creditanstalt, Austria's leading bank at that time.

[REDACTED]

Under Androsch, the state control of the black bank was reduced to 51%, although to be fair Androsch was also credited with the drive at Creditanstalt to move to new technology. Whatever criticisms might go his way, there is little doubt that he was and is a good businessman, and he saw the potential it offered. As a result, when it was

Androsch, who is currently a respected leader of industry in the country, was forced to step down from the bank job the year the Lucona book came out - not because of his links with Proksch, but because he was found to have lied to Parliament over an investigation into the scandal surrounding the Vienna General Hospital (AKH), the biggest hospital in Europe, that was accompanied by allegations of bribe-taking and corruption in which SPÖ politicians from Club 45 were involved. The plan for a central Vienna hospital kicked off in 1955 when it was expected to take 10 years and cost a billion Schillings (€72 million). It ended up, however, taking 37 years and costing 45 billion Schillings (€3.27 billion).

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When Gerhard Praschak, co-director of the Österreichische Kontrollbank, started to be put under pressure (and later committed suicide) in 1996, part of the reason lay with the fact that the later Finance Minister Viktor Klima was emerging as the new leader within the SPÖ, and Franz Vranitzky, with whom Praschak's fortunes were tied, was on his way out. It was no surprise to many therefore when Praschak was summoned by Gerhard Randa to be told he was being moved.

The former Minister of Science and Art, Rudolf Scholten, was coming out of politics at the same time as Vranitzky was making way for Klima. Scholten was looking for a cosy position in industry as a 'reward' for his hard work. The takeover of Creditanstalt was a good excuse for positions to be rotated. It was a typical job switch in the Randa Empire that also involved a director at Investkredit moving to the post office savings bank, the PSK from where bank governor Erich Hampel would be moving to Creditanstalt.

After the takeover of Creditanstalt Randa needed a CEO to run the company that would not make waves, and selected Hampel, a man who was described by a journalist on the respected daily newspaper *Die Presse* as having the eloquence of a goldfish in a goldfish bowl. The National Bank of Austria (OeNB) governor, the SPÖ's Ewald Novotny, was scarcely less critical of his party colleague, describing Hampel as "a man for all seasons" - someone who will do whatever is requested and blows with the wind.

As the head of the supervisory board at Bank Austria he was certainly informed about the details of the Madoff construction, and is accused of being the man who pulled the political connections to keep the matter buried, and then had it concreted

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But Randa also had an ability to fall out with partners. He fell out big time with the former partners at the Wiener Städtische Versicherung (VIG), also closely linked to Vienna city council, though his dictatorial style. The VIG held a 5.5% share in Bank Austria and there was a partnership between the two. But when the Bank Austria stock plunged in value, and former CEO Gunter Geyer complained about the development. He asked Randa what they could do, and Randa said: "If you are not happy, you can always sell it."

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In the Kontrollbank itself he (Praschak) pointed out that the Austrian export subsidy system operated without any checks and balances. In the export business Kontrollbank paid a type of interest support for the export business for Austrian firms. So a big Austrian firm could export and get cheap credit to refinance the deal. It might be that the company didn't need it, but they still took the loan because the interest rates were by far the lowest on the market. So they could take the cash and invest it back on the capital market and earn interest over and above what they were paying. It is classic interest arbitrage, not illegal, but it is financing big firms with tax payer's money. Bank Austria would organise the deals, and had a market share of around 50% of such arbitrage deals. Bank Austria had taken another important step towards being able to do whatever it wanted.

Praschak highlighted the fact that the structure at Bank Austria and AVZ meant Randa could elect himself, and then select the management of Kontrollbank, and then

without anyone to oppose him get a guarantee against any losses by putting all of the risky business he was involved in into the name of the Republic of Austria [REDACTED]

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But back to 2005, and the Madoff pyramid scheme was almost at its end with money fast running out. Yet the Madoff story did not end there. Instead, it came dramatically back to life with the massive influx of new money. And the driving force behind that turnaround was Sonja Kohn. And she was not alone.

* * *

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At the core of this con the trustee said were products that were “emblazoned with HSBC’s brand”. But alongside that was another name that if anything was even more in lights: Bank Austria, and another name that in contrast was nowhere but should have been everywhere: Bernie Madoff.

* * *

Austrian faith in hedge funds had been rattled by the scandal of the Manhattan Investment Fund (MIF), a \$400 million hedge fund scandal in which Bank Austria was heavily involved that was really a classic example of a case being buried, and concreted over. Scott Berman, a lawyer at Friedman Kaplan Seiler & Adelman in New York who represented investors that lost \$100 million with MIF, described the funds *Austrian* manager Michael Berger as a “poster child for hedge fund fraud”.

At one point when Berger fled justice in the US he was America's most wanted man, and featured on TV programmes appealing for help in his capture. Might the fact that he had also claimed to know a lot of secrets about mysterious payments from Bank Austria to the Cayman Islands been the reason he stayed free for so long – information that he was prepared to pass on in order to escape jail? Might that explain how, even though he had handed in his passport, he managed to flee back to Austria where he lived with his parents before a tip-off led police to discover him years later?

Whatever the truth, the fact is he did escape jail, and back home in his native Austria, according to research for this book, he is continuing to avoid it.

During the investigation it was discovered that while many banks put restrictions on staff working in places where there might be a conflict of interest, at Bank Austria it was almost routine – and MIF was another perfect example. Set up in 1996, four months later in May Bank Austria had invested \$21 million in the fund. But that was not really a surprise, from the start Berger had put two Bank Austria managers on his board, one was Robert Schimanko and the other was Rene Riefler. Schimanko managed to be pulled free from jail in America after the intervention of his lawyer, Christian Hausmaninger, a member of the New York and Austrian bars, and a man who also turned up later involved in the Madoff fraud in at least one Madoff legal case.

Berger had gone to New York from Austria in 1993, just before his 23rd birthday, he hadn't finished college and had enrolled in a teller-training program at the Salzburger Sparkasse Bank AG, a savings and loan bank in Austria, working in its money management group briefly before heading to the US.

It was Salzburger Sparkasse that was at the centre of the WEB Group scandal for handling the transfers in which investors were promised huge returns that were not delivered. The bank's former deputy CEO Gerhard Schmid and two others were jailed, with Schmid, who was visited in jail by SPÖ former Chancellor Franz Vranitzky and other key SPÖ figures, the first senior bank official to be jailed in modern Austrian history.

When Berger had opened Manhattan Investment Fund (MIF) on Park Avenue he managed to raise more than \$575 million from investors. He believed that US stocks were over-valued. He set up MIF to bet on the fact the prices would fall. He was right with the guess, but not with the timing, and he was much too early with his strategy, the stock market bubble of the late 1990s was in full swing and his strategy led to

about \$400 million in losses on IT related products. It had just \$40 million of investors' money left when he was caught.

He had persuaded in total 280 investors to put in money by grossly overstating the investment performance and market value of the fund's holdings. Like Madoff, that involved creating phony account statements that portrayed the fund as profitable, with hundreds of millions of dollars in assets in an account at an Ohio based firm Financial Asset Management (FAM), the fund's executing broker. In reality, the fund held no assets at FAM, and had lost millions of its investors' money.

Berger admitted hiding losses suffered from his bad bets on Internet stocks by doctoring brokerage statements from Bear Stearns, the fund's prime broker, who were the ones to eventually complain to the Securities and Exchange Commission (SEC), after which the fund was shut down.

Berger hid the losses from his investors for more than three years before he finally admitted in the year 2000 that he had lied about the performance. He pleaded guilty to securities fraud but then failed to appear in a Manhattan federal court in 2002 for sentencing, and instead went on the run for five years.

With no passport it should have been hard for him to leave the US. But he should not have been hard to find after that – he spent the time living with parents in Austria. Yet when he was arrested in 2007 Austria refused to extradite him to the US where he would have faced a six-and-a-half year term for the fraud, and another five years for jumping bail. Instead, he was remanded in custody in Austria and then released without charges after prosecutors failed to meet a key deadline.

US regulators had failed to spot the Manhattan Investment Fund was a fraud exactly as they had missed the signs with Madoff. MIF registered a 15% profit while others who mirrored his short selling strategy had made an 8% loss. The Manhattan Fund's broker-dealer, a heavily regulated firm, had helped Berger to mislead his clients, the fund's administrator and auditor.

It is also a case that illustrates perfectly how the Austrian system that can swing into action to bury and concrete over uncomfortable revelations. It is now 13 years since he admitted his guilt and the case in Austria is still in the investigative stage. Two other banks that had invested \$4 million were the Austrian-based Erste bank AG and Raiffeisenlandesbank Niederösterreich -Wien, although neither took legal action to recover the losses of their investors.

Bank Austria lost money in MIF but it could have been worse. Another Austrian bank that was a 100% subsidiary of Bank Austria was the Schoellerbank. It had Madoff suspect Simon aka *The Butcher*, now aged 60 and retired, and Kretschmer that were also directors on the board of the Primeo feeder. Did Schoellerbank have inside information? Either way it pulled its money out of MIF in May 1999, shortly before it collapsed.

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As documents in the TLM Files show, Sonja Kohn more than anyone was the mastermind in his plan to move Madoff's fraud from the United States. It was Kohn that took the malignant tumour that was Madoff and spread it to the rest of the world.

Both Kohn and Madoff were Jewish, but there the comparisons end. While Kohn was an Orthodox Jew and described as devout, there was no indication that Madoff was excessively religious. His mistress Sheryl Weinstein in her book 'Madoff's Other Secret' in which she revealed intimate details about him, including several pages

devoted to the small size of his private parts, said that she never heard of him going to the synagogue. He also enjoyed pork sausages, according to his former London office manager Julia Fenwick. And while both Kohn and Madoff were at the heart of the fraud, Madoff was jailed for 150 years while she is still free. In Vienna, she still meets contacts and friends at the Sacher Hotel.

One of her victims who spotted her there six months ago said: "I really couldn't believe it, she was in the hotel acting as if everything was the way it always was. I really wanted to flip out, I was furious."

However, with US officials accusing her of being a ringleader in the Madoff fraud, it may explain why she has not travelled to New York since his arrest, even though her daughter, son-in-law, and grandchildren live near New York City.

Despite the scandal she remains "Austria's Woman on Wall Street", who from humble roots built up a global financial network that left her honoured in 1999 with the grand medal of honour for service to the Republic of Austria. That honour still stands for "a woman who had seen the destruction of her life's work thanks to Madoff's machinations," as one newspaper in Austria put it. And there is no indication that there are plans to ever strip her of her honour.

In contrast to the virtual witch hunt in the media against the Madoff family, the family of Sonja Kohn has also escaped almost completely. One struggles to find even a name in the mass of media coverage. They are protected in Europe generally - and in particular in her Austrian homeland - by privacy laws that ban names being published in connection with a crime.

In fact, Madoff's family seem to have been doubly betrayed, because while Madoff persuaded family and friends to invest and stole their money, leaving many penniless, Sonja Kohn used her family and friends to act as beneficiaries for the millions she took from Madoff victims.

Madoff's wife Ruth has had to live with the indignity that even her used underwear was seized and sold off to pay for some of her husband's debts. One of her sons committed suicide, her brother-in-law, Peter Madoff, was jailed for his part in their fraud, and all of them lost almost everything at the end - not just their money - but their name as well.

Yet on the complicated diagrams created of the payments put together for this book up to half of the positions are filled by Sonja Kohn's relatives. There is her Austrian mother Netty Blau, her daughter Nicole Herzog, son-in-law Moishe Hartstein,

daughter Rina Hartstein, son-in-law Mordechai Landau, daughter Yvonne Landau, her son Robert Alain Kohn, daughter-in-law Rachel Kohn and son Michael Kohn. And at the centre of the web are Sonja and her husband Erwin. Asked during one court case why it was that she had paid cash totalling millions to people like her mother and daughter instead of a company bank account, her legal team said that “within the community in which Mrs Kohn moves, family is very important and there is nothing sinister in Mrs Kohn making payments to her family”.

[REDACTED]

The fact is that Kohn and her husband, and also her mother, two sons, three daughters and her children's married partners became wealthy, even if meant they ended up being named as defendants in the lawsuit against her. According to the complaint, several of them invoked their Fifth Amendment rights more than 100 times during depositions with the trustee's lawyers. The Fifth Amendment protects witnesses from being forced to incriminate themselves and to *plead the Fifth*, as it is known, is to refuse to answer a question because the response could provide self-incriminating evidence of an illegal act.

Sonja Kohn was at the heart of the Madoff fraud and understood every facet of it, because much of the illegal structure had been put in place by her. Ruth Madoff in

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In contrast to what happened to Madoff's wife, with Sonja Kohn, rather than paying money back drew it out in large amounts both before and after the scandal broke.

In May 2009 the British Serious Fraud Office (SFO) got an order to see the account data at Vienna-based Bank Gutmann, Kohn's bank, which clearly showed there were "additional payments from Madoff to Sonja Kohn or those connected to her."

On December 29, 2008, for example Kohn requested that Bank Gutmann transfer €1.98 million of payments from Madoff Securities International Ltd. (MSIL), Madoff's London-based entity, to an account of her mother Mrs Blau-Turk. When questioned about it, she said it was her mother's money, adding: "Mr Picard refers to an instruction given to Bank Gutmann to transfer €1.98 million to an account belonging to my mother. These were assets in my mother's own account belonging to my mother that were transferred by her from one account within Bank Gutmann to another account within Bank Gutmann in the same bank located in Vienna, Austria. This has nothing to do with any of the (Madoff-linked) funds."

Yet the London judge told the court that "every single aspect of this statement is incorrect" and he added it was "difficult to see how she could have got this wrong by mistake, since the bank documents show the monies were not her mother's and the transfer was not made by her mother, who had no signatory power or discretionary authority over the account at the time. The exercise conducted by forensic accountants (working for the victims) demonstrate that the money in question were the proceeds of MSIL payments." He added: "Mrs Kohn's evidence on this point is highly unsatisfactory."

He did not ask why the Austrians had not frozen the money. One of many occasions in fact when they had failed to act to secure stolen Madoff funds.

On another occasion the British Serious Fraud Office (SFO) found that cheques which had been made out by MSIL to Kohn companies were not paid into company bank accounts, but instead endorsed in favour of her daughter, Nicole Herzog. Signing over company cheques to a relative that were then paid into that person's account at Bank Gutmann was not only unusual, it was also possibly illegal. But there has been no action in Vienna. The account where the money was paid was one where both Mrs Kohn and her husband were signatories. No explanation for why this was done has been forthcoming from her or her daughter.

In fact, the network she set up was so complicated that at one point her bankers at Bank Gutmann had even suspected that she might be involved in money laundering and had discussed the case with financial officials in Vienna.

In total two notifications of a possible breach were sent by Bank Gutmann which had resulted in Vienna police investigating and filing a report with prosecutors – where again nothing happened.

When questioned by prosecutors in Vienna on April 21, 2009, she even denied knowing anything about her own companies - including amnesia over her very first firm Erko (5). They asked what she could say about the fact the SFO in England had charged her “with receiving a total of £7 million by 2007 through a consultancy contract with Madoff's London firm MSIL.

She said: “I personally did not receive any money. I am not prepared for this question and I do not wish to make any further comment on this at the present time. I do not remember whether I have ever known the company Erko Inc. With regards to whether I know the company Tecno Development & Research, I do not wish to answer this question at the present time as I wish to make further enquiries in my own time.”

Tecno was founded on February 21, 2002. Based in the offices of the Bank Medici subsidiary in Milan, it was liquidated on December 5, 2008. Could it be that she had not expected the question because the firm was managed and owned by her mother? In reality, as everyone that worked there knew, it was effectively owned, and managed, by Kohn and used at least some of the same staff as Bank Medici such as Paul de Sury, who was also a director of Herald Fund, and a director of HAM.

[REDACTED]

Kohn described herself then and now as someone that had been left devastated by the crime of the century. She would love to give back the millions she had made, but she can't remember what she's done with them. She also refuses to accept any blame for what happened, which may be part of the reason why she and her family have not suffered in the same way as the Madoffs, despite their role in helping him raise cash.

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But she was also much more, including a networker *par excellence* who travelled the world dispensing gifts of *Sachertorte*, the Viennese chocolate cake, and name-dropping as she offered access to her exclusive club. Is that network the reason she has still not been charged in her native Austria where it was announced she was supposedly under investigation? Insiders speculate that charges will never follow – and even if they did, nothing would come of them.

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Sonja Kohn, backed up by powerful lawyers, media friends and her own understanding of the importance of good PR continued to be portrayed as one of the victims of Madoff – as she continues to hold onto the millions distributed among family and friends. Officially she is known to have received \$62 million, and if the trustee is to be believed, it was probably far more than that.

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The network Kohn and Madoff created to cover the details of their relationship was always going to be close to impossible to reconstruct. All the indications are that right from the start it was set up knowing that this day would come. Even the fact that Madoff would order records of any meetings they had destroyed each time she visited in itself speaks volumes, even as it also made it extremely difficult to put together what had happened between them.

As this book was being published a new film was unveiled about Madoff's former personal secretary Eleanor Squillari entitled *In God We Trust*. In it the film makers Derek Anderson and Victor Kubicek pose the question as to whether Madoff is

protecting anyone, and ask where is the missing €12 billion that no one has been able to find?

Squillari says: “The person who will know for sure in my opinion is Sonja Kohn. She brought Bernie more money than anyone else. I saw her invoices. Whenever she was in our office, he found time for her. Their conversations were always one-to-one. He always shut the door when he had a conversation with her.”

In fact, when investigators went through the paperwork, they found that Madoff had documented everything. When, for example, he was advising one of his feeder funds what to say about how to deceive the SEC during a planned visit, he even wrote the start of the phone conversation down: “This conversation never took place.” Yet with Kohn *everything* was destroyed.

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Her artists of finance included the two former government ministers Ferdinand Lacina and Hannes Farnleitner. For them the job on the board at Bank Medici would have been well paid, and like most political appointments probably involved little work. After Madoff was exposed two other board members even claimed they had never discussed the New York investment manager until the scandal broke. Like the vast management fees Madoff investors paid – it was money earned for very little work. What they did discuss was all the money they were earning, and what to do with it. The Bank Medici CEO was Helmuth Frey, who had joined Bank Medici's Supervisory board in 2006. He reportedly met Kohn while working as a Director of Bank of America in New York between 1973 and 1984 and was the man who oversaw the creation of the Herald (Lux) Fund. Frey also confirmed that the bulk of the time in board meetings was taken up discussing the income.

But if that was the case, and well over 90% of the income of Bank Medici came from Madoff, how could they not have discussed him? Speaking to the Austrian Financial Market Authority (FMA) in January 2009, Frey admitted they knew the funds were from Madoff: "We knew they sold so well because Madoff was behind them." He also confirmed it was well known that Madoff was extremely sensitive about being named in the fund prospectuses.

For herself, Kohn refused to serve on Bank Medici's management board, even though under Austrian corporate law this is the place where the 'real power' should

have been. Rather, Kohn served on Bank Medici's supervisory board, which is relatively powerless, and also therefore less likely to be the place where legal actions ended up. And in any case despite the lesser role, nobody that worked there was under any doubt as to who called the shots.

[REDACTED]

One of those who had questions had been UniCredit financial expert John Absood, who had refused to rubber stamp approval for Herald USA after he was asked to carry out due diligence on the product for bank customers.

He had gone to Bank Medici directly to get answers, and was passed on to the Austrian Andreas Pirkner, Director of Asset Management and a man who he found was manifestly unqualified to answer any detailed questions about hedge fund investment vehicles. But then again, not being qualified seemed the perfect qualification at Bank Medici. Pirkner had worked for Bank Medici from 2003 to May 2008, and in 2005 was made head of institutional sales, in 2007 director of asset management at Bank Medici, and in 2008 he helped to launch the new Herald (Lux) Fund, where he was named as a director and was in regular contact with Nograsek, the Head of Subsidiaries at Bank Austria.

Egyptian-born John Absood, in contrast to Pirkner, was qualified for the job and after working for UniCredit in London was given a contract starting in April 2007 in which he was sent to Munich in Germany to work for the Bavarian-based HypoVereinsbank (HVB). The HVB Group had merged with Bank Austria in 2000, and that had created another new set of markets for Kohn and her partners at Bank Medici and Bank Austria.

Absood's role was to be a hedge fund derivatives structurer under a manager in Munich, Germany, called Christian Voit. Voit was the Head of Alternatives Structuring at the HVB Group and in turn reported to Jürgen Amendinger, who was Global Head of Structuring in Munich. Both had been frequently warned by Absood that Madoff was "too good to be true", yet despite that he described how the HVB Group had started "aggressively" marketing the Madoff feeder funds.

Absood was a former options trader and, like Harry Markopolos, a quant. It meant that he had the ability to reconcile trading strategies with their claimed performance. In a letter of complaint he wrote to the Austrian FMA he said his job was to provide “due diligence and analysis of the hedge funds to ensure that the desk was comfortable with the risks of manager (operational, market, credit, liquidity, management) and that we clearly understood the investment strategy”. That meant he was also exactly the sort of professional that Madoff preferred to avoid. Absood was not happy with the answers he got from Pirkner at Bank Medici. On his own initiative he called and asked Bernie Madoff about his returns in spite of a ban on doing so. When his boss found out, Absood was fired, the reason: “Poor performance.”

The fraud he had tried to warn Voit and Amendinger about cost Bank Medici’s clients, of which HVB Bank Austria was the institutional shareholder, over \$3.2 billion. In addition, Pioneer Alternative Investments (PAI) which is a wholly owned subsidiary of Bank Austria “and with whom Mr Voit maintained a very close relationship” according to Absood, lost over \$1 billion of client money in Madoff. This is on top of the €75 million UniCredit lost through its own Madoff investments.

Absood told the FMA that the HVB team in Munich at the time had been creating leveraged access to the Herald USA Fund (Madoff feeder fund managed by Bank Medici in Vienna) as well as Primeo Select managed by PAI and the flagship Pioneer Allweather fund of funds series. In a nutshell, it meant investors were borrowing to give the money to Madoff, counting that the income would be enough to pay off the interest on the loan.

Absood said his boss Voit told him when he joined that all the due diligence had been done on the funds, but when he was asked later to do a further report he realized this could not be the case. He had been told, for example, that the fund was managed by a “few traders” at our “sister company”, Bank Medici. But when he checked he found the alleged traders at Bank Medici and Herald Asset Management Ltd were merely operating a feeder fund to Madoff, and made no investment decisions themselves beyond the initial decision to hire Madoff to manage the assets.

Alarm bells started to ring, so he had then pressed Mr Voit for access to Herald’s investment managers, traders and risk managers. Voit responded that “we could not speak directly to anyone at the proprietary trading arm of Madoff Securities although he could arrange a call with a *friend*,” and that turned out to be Andreas Pirkner at Bank Medici. Absood said it would not be enough as Pirkner did not directly manage

the trading or risk management of the fund. The reaction, he said, was that Voit “was becoming increasingly irritated at my insistence on doing my job”. But he said that like Markopolos before him, the figures just did not add up: “I put together an Excel spreadsheet and tried to re-create the investment strategy using simple trading rules and varying assumptions. My back tests could not produce anywhere near Herald USA’s risk adjusted returns (Sharpe ratio). I shared all of this analysis with Voit and other colleagues and he seemed increasingly agitated that I would not sign off on the potentially lucrative proposition. Some Madoff feeders were charging an upfront sales fee of 5%”.

Voit pointed out that French banking giant BNP Paribas had issued leveraged certificates on Herald USA, Capital Bank had issued capital protected notes and that PAI (an asset management arm of the HVB Group) had invested in Madoff funds: “I simply resisted the pressure and told him that being an ex-options trader made me quite suspicious, and that I could not sign off without further investigation. Mr Voit, however, would not assume responsibility himself and continued to pressure me to sign off on Herald USA. I pointed out that he was still in charge, it was his call, but he just would not do it.

“In the end I spoke to Andreas Pirkner. He confirmed that the purpose of buying the 30-50 stocks was simply to ‘mimic’ the S&P 100 index rather than ‘outperform’ the index. Yet if you want to mimic the index why not just buy S&P 100 futures outright or through OTC swaps? The point is that the strategy made no sense unless the investment objective was to pick the 30-50 stocks that outperformed the index. But Mr Pirkner denied this was the case. As a result it became even more difficult to match the actual return history of the fund.

“Pirkner said that the investments were UCITS III compliant yet these regulations required regular portfolio monitoring, valuation and risk assessment. He (Pirkner) claimed that he oversaw these reports personally but didn’t respond to a request that we could come and see the operation ourselves. The point of UCITS III was that it was supposed to provide full transparency to investors and yet even the positions report we had received earlier was clearly incomplete.”

The conversation ended when “Pirkner told me no one from our team could speak to anyone directly at Madoff Securities, and that all communications had to go through him.” Voit, he said, was “furious” when he again refused to sign off the fund, and in a bid to defuse the matter, had defied the ban and had called Madoff’s office direct.

He said: "I called up Madoff Securities in New York from Munich and I told the receptionist that I wanted to speak to one of the analysts or traders responsible for overseeing the Herald USA Fund. Interestingly, I got transferred to another Madoff (not Bernard) and I told that person that I was calling on behalf of Bank Medici as they had asked our desk at HVB Group to structure leveraged certificates on the Herald USA Fund and I wanted to get more information. That person took my name and number down. A few hours later, I received a call back from Bernard Madoff. I was somewhat shocked when I received the call. I thought it odd that Mr Madoff would make the call in person as usually you get to speak with an analyst or someone actually crunching the numbers. The conversation was pretty brief as I asked Mr Madoff directly whether he recommended that investors leverage the returns of the Herald USA Fund, given that the volatility seemed very low. He responded that he did not advise clients to further leverage their investments. He also mentioned that he had been managing money for over twenty years and that he was managing over \$20 billion. Immediately after the call, I sent an e-mail saying he was not recommending leveraged structures on his funds to Mr Voit as well as Mr Amendinger."

As with the pressure on TLM to allow access to his assets, so pressure grew on Absood for him to put his name to the due diligence and give the all clear to Madoff so the commissions could start to role in. He was contacted by the bank's personal manager Ann Absolon, who had told him he was to be given an internal transfer, but a short while later he was told he was being immediately terminated for 'inadequate performance'. He said: "They did not even give me the chance to resign."

In a later tribunal for unfair dismissal that he settled "for a pittance" because he wanted to move on, he specifically said Madoff was completely "intransparent" and "failed even basic due diligence". I further pointed out "that HVB clients would suffer as a result of any legal action taken against the Herald USA Fund".

Once he was out of the way in August 2007, the fund was signed off. UniCredit and its various subsidiaries and partners including Bank Medici went on to further increase their client exposure to Madoff from then until December 2008, ignoring Absood's written objections. He concluded: "I don't know what Voit and Amendinger shared with others (In Bank Austria/HVB). Whatever the motive of management (whether gross negligence or worse), it is clear that clients are at risk when investment managers do not exercise fiduciary prudence."

Absood's story is not an isolated event. That became clear at UniCredit's board of directors meeting on December 23, 2008, which revealed that other internal documents questioning Profumo and Guty's relationship with Kohn and Madoff had been suppressed.

Kohn and Bank Austria actually had connections with UniCredit long before UniCredit's takeover – and that connection started through Gianfranco Guty. Guty was Director of UniCredit's Private Banking from 2002-2006 and Deputy Vice Chairman of from 2006-2009, but before that he worked at Banca Intesa and served on the board of directors from 1999-2000. And Banca Intesa, UniCredit's largest Italian competitor, had a minority position in Bank Austria in 1991, at one time holding a third of its shares. In 1998, Banca Intesa and Bank Austria partnered with Kohn to form FundsWorld in Milan and it was Guty that helped Kohn upgrade her business property in New York. In the early 2000s, Banca Intesa leased office space to Kohn's Eurovaleur and Infovaleur in its New York offices.

Apart from Absood, another attempt to expose the scam was in 2008, when Kohn had given a Vienna-based financial expert Thomas Lachs, a man well-connected in the Austrian investment community a desk inside Bank Medici. She wanted him to help market and distribute Herald (Lux). When Lachs sought information about the investment manager for the fund, Kohn ordered Peter Scheithauer to throw him out and cancel the arrangement.

Scheithauer was not excessively political but he must nevertheless have had SPÖ ties, and in 2004 was a director in the M&A Privatbank AG with Rene Alfons Haiden, a former CEO of the 'Z' and the boss of Randa in the 80s, and Haiden would not have tolerated working with someone who was not a socialist.

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Pirkner himself later admitted to Austrian authorities that he and Bank Medici had no visibility into the Medici feeder funds, particularly its largest, the Herald Fund. It is also a measure perhaps of how little he understood exactly what had been going on under his nose when he tried to say he had personally implemented the supposed “collar” in the split strike conversion strategy. It was clearly a bizarre claim, and a poor attempt to continue to follow his boss Sonja Kohn’s rule to disguise the extent of Bernie Madoff’s involvement with them. It also confirmed what Absood and other staff said about him, namely that Pirkner simply didn’t understand what had been happening right under his nose.

Could that be why Pirkner was the Bank Medici contact for due diligence questions regarding the Medici Enterprise Feeder Funds?

In the claim he had implemented the split strike strategy Pirkner was not alone, and in 2009 other Bank Medici and Bank Austria colleagues including his boss Sonja Kohn and BAWFM manager Ursula Radel-Leszczynski tried to say that they had been responsible for the implementation of the strategy. Madoff, they claimed, was merely their executing “broker”.

Kohn’s network had done its job, and continued to do her bidding even after Madoff’s exposure. And she had managed it all from behind the scenes on the supervisory board. But then again, Sonja Kohn always got her own way, and as her former colleague said: “Things happened because she wanted them to happen, you just had to get used to it.” By the time Bank Medici was formed, she had everything sewn up and was managing it all. She would work non-stop on the plane between

New York and London or Vienna, all the technical paperwork was written up by hand and then sent to Bank Austria to be processed into reports. The material covered a broad spectrum, from marketing and PR strategies to new business opportunities, but of course what it was always most often dealing about was performance, how much they were to get from Madoff, and how it was to be divided up.

Her former Medici colleague said: “When I worked with her there were always handwritten cards that would come from America or handwritten faxes that had the performances that would come into Bank Austria’s securities desk.

“Bank staff then turned that into proper reports or whatever. Sometimes what she sent was marketing material - all the marketing material was produced by her. She had a way of making things sound good and she really is a good businesswoman. People underestimate that. They also underestimated the fact that she was obviously a good businesswoman to her own advantage. She was involved in launching Madoff out of Austria right at the start, she knew she needed a partner here and she popped up around the time of the merger between ‘Z’ and Länderbank (1991).”

[REDACTED]

Her former colleague continued: “I know that she had been trying to get involved with BAWAG - to do business with them. But they refused.”

What she would not have known is that BAWAG did not need a hedge fund manager in New York with off-shore links, they already had one, Wolfgang Flöttl, who had been busy making hundreds of millions in profits for them up until 1994 in high risk deals. When the Austrian public found out it was stopped, having made substantial profits, then started again in 1995 under new CEO Helmut Elsner, where it made billions in losses.

Perhaps Bank Austria was aware of the initial BAWAG success and wanted to copy it? They were certainly aware that they desperately needed money. And so her message fell on fertile ground, Bank Austria gave a provisional yes, and Madoff was

given the chance to show what he could do as one of the managers in a newly-created fund.

To get to the top she needed connections, but who was her partner at the bank? It is known that at this time she had met Peter Scheithauer at a Bank Austria function in New York. Also, when Kohn had first turned up at Bank Austria she had managed to latch on to the head of securities, Wolfgang Feuchtmüller, and he was not a man that would have been interested in the sort of business she offered. But he was also not good at fending off the sort of high pressure sales methods she used.

“As far as I know he wasn’t interested in her ideas but she pestered him, if you put a bit of pressure on him, he would deal with it by passing the problem on to make her somebody else’s problem, and with him that meant upwards. And in her case her ideas really were brilliant. If you go to any management and say you can earn 150 million Schillings (€11 million) a year extra, who’s going to say at no at any big company? In fact, they had to say yes because they didn’t have enough detail to understand it, and they needed the money.

“That was how she ended up at the director level. There was a lot going on at that time, as you can imagine with the two banks forming Bank Austria, and he opened the door for her. Through him she got to Randa, and his right-hand man was Zapotocky who became her main contact.” At this time Randa knew his new bank would need investment, lots of it, and as a result Kohn’s ideas fell on fertile ground. They were interested, but how to make it work?

They had tried her out on Capital Guaranteed products initially and the project had worked. It was soon to be expanded to other areas.

The Bank Austria insider said: “Zapotocky and Randa founded the Medici company because they weren’t exactly sure how the beginning would work out. They were uncertain, but they could not afford not to try it, and they wanted to see how the investment would go, to test the water. And it worked. I’m sure of course that the idea for the company came from her. Bank Austria just said ‘Yes, let’s try it’. I wasn’t there but I can hear her voice in my mind, the way she always spoke, ‘We are going to do it, it’s a really good idea and we’re going to do it. There will be so much money coming in you won’t know what to do with it all’.

“Did they do any rechecking after that? I doubt it, simply because it worked. And if an instrument works, why check it?”

Stefan Zapotocky, who was delegated the role of dealing with Kohn by Randa, was one of the Länderbank team that came over with him to Bank Austria. He was head of the Division for Securities (Asset Management), which is one step below a board position, and where he was reporting to the director Friedrich Kadrnoska, also named in the Bank Austria Conspiracy.

Kadrnoska, as a former 'Z' director, was a strong SPÖ man, and head of the securities department in Bank Austria, regarded as the man who danced to the tune of Gerhard Randa, Karl Samstag and Franz Zwickl. Whatever they needed – he would organise it. He was also former head of the supervisory board of the Vienna stock exchange and the brick manufacturer Wienerberger. Zwickl was a former Bank Austria director, who stepped down for health reasons before he turned up again in the supervisory board of the Wiener Privatbank Immobilien Investment. And Samstag was a former Bank Austria Creditanstalt director and CEO. The trio of Zwickl, Samstag and Kadrnoska together with Former Bank Austria supervisory man Heinrich Gehl set up A&I Beteiligung and Management GmbH. The company had surprising success in dealing with Bank Austria property sales, often turning up negotiating the eventual deal despite the fact that there were often dozens if not hundreds of other potential bidders. Essentially, they acted as an intermediary in real estate business between the bank and Austrian property developers, for example to Rene Benko, getting a commission on the deal in the process. All perfectly legal.

Zapotocky played such a key role in the scheme that in the letter in December 2012 from BakerHostetler to Vienna prosecutors they named him as a “suspect for criminal proceedings”.

When the 'Z' and Länderbank fused to form Bank Austria, there were synergies that meant job losses, and it would be fair to say that it was Länderbank staff that bore the brunt of that. Most were happy if they kept their jobs, others ended up with a demotion or jobless, and almost none ended up with a promotion. It was only a very small number that actually advanced – and Zapotocky who benefitted from his link to Randa was one of them.

Why was that? In part it was for sure his connection to Randa, but it was also to do with the fact that in the 90s there were really only two banks in the securities business – Creditanstalt and Länderbank. The others simply had no experience. It therefore meant a limited pool of people in the local market with the experience. It did not

matter that he was in the conservative (ÖVP) camp, it was the experience of the markets that counted.

And that raised another reason to have him on board. Zapotocky was the only one of the Bank Austria Conspiracy that was not SPÖ. As already mentioned in Austria, no project happens easily without a foot in both camps, and with Zapotocky they had access to an ÖVP co-conspirator. For the members of the Bank Austria Conspiracy it wasn't anything to do with party politics by this point, even if they used the opportunities it provided. It was to do with being part of a group, and whether a person involved had the possibility to contribute to the moneymaking machine they were creating. Zapotocky fitted.

He had already signalled throughout his time at the bank that career counted most - and money. And not money for the bank or the customer. He is proud of the fact that he is the owner of the *Weissenburg Castle* and likes people to call him the 'Lord of the Castle' where he offers annual guided tours for locals.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He served on Primeo Fund's and Alpha Prime Fund's boards of directors, and travelled on behalf of Bank Austria to New York two to three times a year to meet with Madoff to discuss Primeo Fund. In fact he was the CEO and president of the Primeo Fund since it was incorporated on November 17, from 1993, until the turn of the century.

As a senior general manager with global responsibility for the securities business of the Bank Austria group that included equity and bond trading, investment banking and capital markets, funding, asset management and private banking – in short – he understood the business and was well placed to see behind what Madoff was doing. And to see when things were not being done properly.

Yet giving evidence to a civil court in Austria he said: "I was especially involved at the beginning, and was concerned with setting up the concept for Primeo Funds. We had a team of international experts who were in particular Americans. The construction that we finally settled on was suggested by one of our partners, Bank of Bermuda Luxembourg, and it was then implemented."

In 2000, he became chairman at the Vienna Stock Exchange. The salary was not to his liking but the influence was. Through Bank Austria he had access to some important clients, but at the stock exchange he had direct contact to all of the stock listed companies in Austria. All the international corporate clients. The big names. He also assumed several additional responsibilities as a chairman on supervisory boards of Austrian insurance companies and other domestic and international fund management companies.

He also set up the company BAST with a female colleague from the Vienna stock exchange (VSE), Barbara Wösner, the idea was to find and invest in a company that would be the next Microsoft. BAST was essentially buying a stake in small companies to make them grow so they could be launched onto the stock exchange. It was a failure. A former colleague said: "He was too keen to be rich too quickly, and greed is not a good partner for a manager. It makes you blind – to my mind he made a lot of bad decisions as a private venture capital investor. It is also something that takes real work, and that is not his thing."

The people that the trustee accuses of involvement in the Bank Austria Conspiracy were therefore well connected, both with each other and at the highest levels in the banking circles in which they moved, and they knew what they were doing. It was a network of people perfectly placed for Madoff to take advantage of, if he could access that, and for that job Sonja Kohn proved perfect.

Kohn's former colleague confirmed: "Zapotocky and Randa were her way into the bank, and she quickly started to get involved with other departments by using their names. She realised she only needed to say it was what Randa wanted, and it happened. But the fact was she was always very liberal in interpreting conversations she'd had with him in what she passed on to others [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

In short, Bank Austria opened doors and brought not just financial rewards. Or as the Trustee’s RICO case put it: “Bank Austria lent its name and credibility to, and hence validated and bolstered Kohn, Bank Medici, and the Medici Enterprise Feeder Funds.”

The Bank Austria insider added: “Having said that, the biggest door opener was money. All the people around her were keen on money. Everyone that gravitated into her orbit became quickly convinced that she was a very wealthy woman – and they wanted a piece of it. She encouraged that, she always gave you the impression that

she was giving you her personal money, either for nothing or maybe information – and sometimes it was her money. It was in cash or gifts that were easy for her as she would travel a lot by plane. The cash she had was technically from transfers that it was easy to pick it up in places like Switzerland and Liechtenstein, and in former times certainly Italy, Cyprus, Malta, Israel.

“She would pick up cash for interesting gifts. Like a Rolex, flat TVs, jewellery. It was always extremely secret. And impossible to follow. She is really good – believe me, and she would never give a gift unless she saw a real advantage.”

And did she know what Madoff was up to? The insider is convinced she did: “She encouraged other people to think Madoff was front running, but I am convinced that she knew very well that it was a pyramid scheme, everything she did was geared up to the fact that it would eventually crash one day, and it did. Yet the safeguards she spent years developing, the network of companies to hide fees for example, the lack of electronic communication, the cash payments, it has all kicked in to hide her role and let her keep what she earned. Could it have worked if she had not known what she was doing all along? I don’t think so.”

[REDACTED]

Eurovaleur had top money manager Felix Zulauf on board, and had entered the market as one of the many money management firms at the time that were offering to trade in European stocks, with Zulauf making the asset allocation decisions such as how much to invest where using 11 different money managers. Eurovaleur had a subsidiary of the German Commerzbank AG helping to evaluate and supervise the country managers. Minimum investment with Eurovaleur was \$5 million and

[REDACTED]

[REDACTED]

[REDACTED] Both Kohn and her husband had personal bank accounts at Bank Medici and a few days before Madoff confessed, it was Erwin that withdraw all of their personal assets from all the Medici related companies, including Bank Austria. In short, all the places where the money had the potential to be frozen and eventually seized through its link with Madoff.

According to her former colleague at Bank Austria, it was Erwin who was the driving force in the relationship. He said: "He is a tough guy, he always has a friendly smiling face but I have seen and heard massive fights between the two of them where he was screaming at her. I don't want to repeat the words he used. I'd say she was always looking to get every advantage she could because she was driven by her husband."

At the meetings in New York where she was to meet Bernie she was often with her husband, although Madoff apparently never had his wife with him. It was a further indication that these were not personal gatherings but rather business meetings. Erwin is also the registered agent for Medici Finance Services in New York and also served as a director of FundsWorld, created to sell access to BLMIS through the Medici Enterprise Feeder Funds. Bank Austria had partnered with the Kohn's and its minority owner Banca Intesa to create FundsWorld, their Milan-based online investment sales platform. It purported to offer mutual and hedge funds to institutional and wealthy investors: In short - Madoff. That this was indeed the case was confirmed in a fax sent in January 2000 under a Eurovaleur letterhead to Mark Madoff at BLMIS enclosing Italian newspaper articles regarding their new project. FundsWorld was however in the end a complete business failure, or at least it was for the bank if not for the Kohns - Banca Intesa paid them through Eurovaleur, €1.1 million in 2000 and €1.5 million in 2002 for 'participation on the project'.

Erwin is also a director of property firm Medici Realty and also maintains multiple properties in New York, Austria, Italy, Switzerland and Israel, a fact confirmed by Kohn's former colleague: "As far as I know his big thing was always property – flats and whatever. But like everything, even in this it is really difficult to get a handle on him – you always feel you can't really get to grips with what he's about. He's buying and selling property for example, but I don't believe he invests with his own money, so how do you trace it?"

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[REDACTED]	[REDACTED]
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Insiders said Kohn and her husband had planned to move to Switzerland after they were told it was the best place to shield themselves from liability and to keep hold of the proceeds of the Madoff years once BLMIS collapsed.

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But paperwork provided for this book indicates that Ernst & Young demonstrated little interest in doing a professional job. An example is a letter of December 15, 1999 from their Luxembourg office with regards to the Primeo fund which they mistakenly addressed to 'Cohmad Securities Corporation', which is Madoff's company and his address. It should have had nothing to do with the Primeo audit. They were asking for permission to get access to the accounts of the Primeo fund. Yet the letter ended up in the correct place, as the authority allowing Ernst & Young to get the data they needed was signed by Stefan Zapotocky.

By 2001 they were no longer writing to Cohmad, but they were still not getting it right, in fact by this time they were now writing to Madoff Securities Corporation which was actually no company at all, and never existed. It again shows how little the auditors were bothering about getting things right. What they were sending was a fax in which it seems that Ernst & Young haven't actually been able to understand the information they've been sent, and asked for clarification. Madoff deputy Frank DiPascali had to explain to them that some of the positions were 'short' and some 'long'.

By 2002 they were still writing to Madoff Securities Corporation in New York. The letter was a notification to say that Friehling & Horowitz (who were Madoff's own accountant) would be coming to the property to do an audit visit relating to the accounting from Primeo. The letter pointed out that the audit would probably take a day – which in itself is not realistic at all for an account of this size. But then again the audit probably never took place anyway – the information would simply have been sent to Friehling & Horowitz who would have passed it on. Ernst and Young advised

“Madoff Securities Corporation” to contact Fano (Ursula Radel-Leszczynski) at Bank Austria if there were any queries. The authorisation for it all to happen was also passed on, with the signature provided by Alfred Simon, the ‘President of Primeo Fund’.

[REDACTED]

It was Kohn that introduced Madoff to the Benbassat family that set up several feeder funds that put almost \$2 billion into Madoff’s hands. She also introduced him to Carlo Grosso and Federico Ceretti, the two Italian money managers based in London who set up the Kingate funds to invest with Madoff in the early 1990s and put a further \$1.7 billion his way. She also introduced Madoff to Charles Fix, a scion of a Greek brewing empire who had established himself as a money manager in London and who ultimately invested hundreds of millions with Madoff through the Harley and Santa Clare Funds.

[REDACTED]

Starting in 1989 with Howard Gottlieb that eventually fed \$3 million to Madoff, she was also to blame for bringing in the Alpha Prime Fund, total investment (\$399,941,000) Bank Austria, (\$1,500,000) FC Investment Holdings Ltd., (\$2,674,988) GeoCurrencies Ltd. S.A (\$5,054,863) Harley International Fund Ltd., (\$2,351,341,277) Herald (Lux) (\$255,600,000), Herald Fund SPC (\$1,533,741,975) Howard Gottlieb (\$3,000,000) Investments Alanis SA (\$5,399,950) Iron Reserves Ltd. (\$3,999,980) Lagoon Investment Ltd (\$609,994,947) Leisure Enterprises Inc. (\$3,500,000) Lexus Worldwide Ltd. (\$ -) Mayfair Corporation (\$1,000,054) Optimal Multiadvisors Ltd. (\$1,757,495,885) Paolo Dini (\$1,005,545) Plaza Investments Int'l (\$534,069,268) Primeo Fund (\$1,210,000) Primeo Fund (Class B) (\$370,483,000) RIP Investments LP (\$3,000,000) Senator Fund (\$247,499,980) Thema International Fund (\$1,043,697,424) Triangle Diversified Investments (\$1,000,000) Zin Investments Ltd. (\$3,249,985).

A total of \$9.139 billion that Madoff had thanks to Sonja Kohn. And there are many other feeder funds not on this list where it is believed she made the introductions. It was a vast sum, and a sum that meant vast fees as a result. She then took complicated steps in building companies to channel those fees to her family and her partners in crime, a move that can have no other purpose than to disguise what she was doing. She set up companies and moved funds between them through invoicing and transfers that could only have been to hide its origins.

Kohn has consistently denied being part of the fraud, yet the judgement over the legal case in London showed that she has repeatedly not told the truth about her business affairs. Her legal representative in the initial London pre trial, Mr Terence Mowschenson, told the High Court that there was no evidence that she had tried to hide her wealth, but the judge in the case rejected this on the grounds that nobody knew how much money she had, adding: "Because she has not made voluntary disclosure of her assets, despite ample opportunity to do so, the true position is that the court simply does not know whether she has dissipated her assets or not.

"The false description on the invoices over many years cries out for a proper explanation from Mrs Kohn which, bluntly, has not, in my judgment, been provided by the evidence she has put before the court. It seems to me that what emerges is a sufficiently arguable case of deliberate wrongdoing, the issuing of sham invoices and the disguising of the true nature of the payments of millions of dollars made to the

defendants (Kohn and her family) over many years. This demonstrates in itself a serious risk (that those assets might vanish).”

In short: Throughout her dealings with Madoff she had come up with ever more complicated and dishonest ways to be paid money from the victims of his fraud. Instead of setting up a network of professional bank accounts she had used friends and family, and generated invoices that even on her admission during her third round of questioning were quite simply not correct.

And yet she maintains she did not know that Madoff was a crook, or that one day his pyramid would come crashing down.

[REDACTED]

[REDACTED]

[REDACTED]

The significance of the old computers cannot be underestimated: He exclusively used this old technology to forge those reports because the ancient programmes could be reprogrammed and manipulated with ease. And these programmes ran on older machines; it was never in Madoff's interests to bring more up-to-date technology, with concomitant computer safeguards, onto the premises.

It was something that Bank Austria seemed to have no problem with either, a staff member who used to have to produce reports from the early 90s from the Madoff project said: "The bank marketed it as access to a mysterious Wall Street guru where it was something special. That was why people accepted that Sonja Kohn would arrive from New York with notes scribbled down on paper about the performance and we were expected to make these into professional reports. When she was not available, the figures came by fax. It was part of the mystery of the man in New York whose name was never passed on. It was a secretive project like that right from the start. She was given an intern for three months to take to New York and I asked him to collect business cards from the Bank Austria people that were going there and others – when she found out she was furious and stopped him. I was just curious to find out who was involved. Obviously she and Zapotocky were doing the bulk of the work in the bank in making it happen, supposedly with Randa's blessing, but what happened in New York was a mystery."

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And the best way of stopping people using his name of course was if they never knew it in the first place. So as Sonja Kohn was flying in Bank Austria executives to discuss setting up a network of feeder funds, one of the most important points on Madoff's mind was the need to make sure his name was so well buried that as few people as possible knew about it.

Why else would Bank Austria have created BAWFM that provided no meaningful services yet took substantial management and performance fees? Quite simply it provided a smokescreen. Without it the size of the Madoff Investment Advisory Business would have invited unwanted attention from regulators, sophisticated investors, and other hedge funds that could have discovered the fraud.

When prosecutors in Austria commissioned an independent report into the Madoff affair by Dr Erich Pitak, he said that based on the documentation available and interviews by the Austrian FMA with those involved that there was *no* evidence that BAWFM had ever carried out its essential duties and responsibilities as an investment adviser.

Officially, BAWFM was set up with the purpose of going offshore to look for investment vehicles and funds. That meant they should have then been screening potential investment managers and matching them to a strategy and portfolio of what they wanted to include – which in a typical Madoff feeder fund prospectus included “options and warrants”, “securities other than options” and “convertible bond and convertible preferred stocks”.

In reality though BAWFM was purely an artificial shell company to make it seem as if they were doing all of the above and in reality simply giving all of the money to Madoff. There was no screening of managers, there was no strategy except for the fictitious split strike strategy that could never have worked with the volume of money Madoff had to hand, there was no examination of other funds and there was no checking or controlling that the selected manager was doing what had supposedly been agreed.

Thanks to the help of the members of the Bank Austria Conspiracy, Madoff succeeded in keeping this investment business secret right up until 2006, when Harry Markopolos' attempts to put the spotlight on his investment advisory eventually resulted in the SEC investigating.

[illegible]

Kohn and Villehuchet had one thing in common in that they both managed large amounts of money for Madoff. And while Villehuchet offered European royalty access to Madoff, Sonja Kohn offered access to wealthy individuals, businessmen, and other private investors. Villehuchet had something Kohn would have liked, he was a blue-blooded European aristocrat. She did not have a title or a 400-year-old ancestral estate in France like Villehuchet, but she did have Austria's top PR agency on her side. And her use of royal sounding words like Medici and Windsor in naming her companies or the imperial crests on her stationary show that has constantly aspired to join the club he was in. On her side Sonja Kohn had something Villehuchet

would have loved, and something that ultimately might have saved his life, an understanding of the markets that were beyond him. He had tried to understand Markopolos' arguments, but had failed, his handwriting tests had confirmed Madoff was worthy of his trust, and he even put all his own money with 'Bernie' – so sure was he of the fact it was not a scam.

When he learned in December 2008 that Madoff was a fraud it destroyed him, and after swallowing an overdose he placed two bins either side of him in his office and slit his wrists. He could not face his family, or his elite investors like Philippe Junot, the former husband of Princess Caroline of Monaco, and Liliane Bettencourt, daughter of the founder of the French cosmetics giant L'Oréal.

When a scheme like Madoff collapses everybody in his wake claims to be an innocent victim, yet as the TLM paperwork shows that cannot be the case, and clearly not all of the people in the Madoff fraud were innocent, but likewise as the case of Villehuchet demonstrates, not all of those at the top were guilty.

Sonja Kohn at least had a PR adviser to represent her at the end, to ram home the message that she was a victim, perhaps the biggest victim of them all. She also had the best lawyers, Wolf Theiss – the biggest and arguably the best of the legal firms in the country.

But the difference between her and a clearly genuine victim like Villehuchet is that he did not have the understanding of the markets to have known the truth. Yet with Sonja Kohn, even if you have a situation where she says she did not know, and was a victim like the rest, given all the evidence is that really believable? How could she and indeed the other members of the Bank Austria Conspiracy not have known? And if she really did not know as she claims, why did she and the others go to such elaborate efforts to find ways around the rules and regulations introduced to protect investors against people like Madoff?

Villehuchet had at least attempted with Markopolos to create a rival fund to Madoff, even if they had failed. But there were no such efforts from Sonja Kohn and her Bank Austria network. They simply created clones and continued to feed all the money to Madoff. Following the rule of why look for a complicated answer when a simple answer will do, the fact is that they knew because it is quite simply unbelievable that they could not have known.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Markopolos in particular knew with no insider information, how could Sonja Kohn and the Bank Austria conspirators not have known?

Why else for example would she have told her closest friends to pull out when she realised that the collapse of BLMIS was imminent? In August 2008 for example she had urged New York real estate developer and close friend, Avery Egert, to withdraw his investment in Herald (Lux) Fund. Kohn made this warning only four months after soliciting Egert's initial investment. Why? The trustee in his letter to Austria said she knew, this book argues she knew because it is impossible to believe that she could not have known, and is it possible that she could have kept it from her bank Austria partners, some of whom had written books on financial fraud, others whom were the directors of trading desks? How did she keep it from them, and did she even try?

Kretschmer in 1992 wrote a discussion paper in the *Österreichisches Bankarchiv* (Austrian Bank Archive) magazine. He was billed as an *expert in international stock exchange laws and insider trading*. He wrote newspaper commentaries on interpreting the new stock exchange act in 1993, in the same year he wrote a review of a book by a Swiss author called *Securities Trading and Broker Dealer Relationships* (7). What is notable about this book is that he was reviewing it at the same time as Primeo was being incorporated and he was the project manager. It includes the statement: "The fraud risk with a broker is especially high if you leave the securities with the broker."

So in summary: He was discussing insider trading laws in 1992 and 1993, and in 1995 he wrote a book with the lawyer Hausmaninger about exactly this topic called *Insider Law and Compliance*, a 200-page book, and both of them were involved with Madoff.

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[REDACTED] The headline read: 'Madoff Tops Charts; Sceptics Ask How.' In it reporter Micahel Ocrant stated: "Most of those who are aware of Madoff's status in the hedge fund world are baffled by the way his firm has obtained such consistent, non-volatile returns month after month and year after year. Madoff has reported positive returns for the last 11-plus years in assets managed on behalf of the feeder-fund known as Fairfield Sentry which, in providing capital for the programme since 1989, has been doing it longer than any of the other feeder funds. Those other funds have demonstrated equally positive track records using the same strategy for much of that period.

"Those who question the consistency of the returns, but not necessarily the ability to generate the gross and net returns reported, include current and former traders, other money managers, consultants, quantitative analysts and fund of fund executives, many of whom are familiar with the so-called split strike conversion strategy used to manage the assets. These individuals, more than a dozen in all, offer their views, speculation and opinions on the condition that they wouldn't be identified. They noted that others who use or have used the strategy – described as buying a basket of stocks closely correlated to an index, while concurrently selling out of the money call options on the index and buying out of the money put options on the index – are known to have had nowhere near the same degree of success.

"The strategy is generally described as putting on a "collar" in an attempt to limit gains compared to the benchmark index in an upmarket and, likewise, limit losses to something less than the benchmark in a down market, essentially creating a floor and

a ceiling. Madoff's strategy is designed around multiple stock baskets made up of 30 to 35 stocks, most correlated to the S&P 100 index. Throughout the entire period Madoff has managed the assets the strategy, which claims to use OTC options almost entirely, has appeared to work with remarkable results.

“Among all the funds on the database in that same period, the Madoff/Fairfield Sentry Fund would place at number 16 if ranked by its absolute cumulative returns. What is striking to most observers is not so much the annual returns – which, though considered somewhat high for the strategy, could be attributed to the firm's market-making and trade execution capabilities – but the ability to provide such smooth returns with so little volatility. The best-known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period.

“Bernard Madoff, the principal and founder of the firm, who is widely known as Bernie, is quick to note that one reason so few might recognise Madoff Securities as a hedge fund manager is because the firm makes no claim to being one. The Madoff feeder funds – New York-based Fairfield Sentry and Tremont advisers Broad Market, Kingate, operated by FIM of London, and Swiss-based Thema – derive all the incentive fees generated by the programme's returns (there are no management fees), provide for the administration and marketing for them, raise the capital and deal with investors, says Madoff. Madoff Securities role, he says, is to provide the investment strategy and execute the trades for which it generates commission revenue.

“While Bernie Madoff refuses to reveal total assets under management, he does not dispute that the figure is in the range of \$6 billion to \$7 billion. Sceptics who express a mixture of amazement, fascination and curiosity about the programme wonder, first, about the relatively complete lack of volatility in the reported monthly returns. Among other things, they also marvel at the seemingly astonishing ability to time the market and move to cash in the underlying securities before market conditions turn negative: And the related ability to buy and sell the underlying stocks without noticeably affecting the market. In addition, experts ask why no one has been able to duplicate similar returns using the strategy and why other firms on Wall Street haven't become aware of the fund and its strategy and traded against it.

“As for the specifics of how the firm manages risk and limits the market impact of moving so much capital in and out of positions, Madoff responds first by saying, “I'm not interested in educating the world on my strategy, and I won't get into the nuances

of how we manage risk.” He reiterates the undisputed strengths and advantages the firm’s operations provide that make it all possible. Indeed, says Madoff, the firm itself has received numerous buyout offers but has so far refused any entreaties because he and the many members of his immediate and extended family who work there continue to enjoy what they do and the independence it allows, and have no desire to work for someone else.”

This could however also be interpreted simply as; I don’t want to sell, because if I did people would see that I had nothing to sell.”

The article ends: “Madoff, who believes that he deserves ‘some credibility as a trader for 40 years,’ says ‘the strategy is the strategy and the returns are the returns’. He suggests that those who believe there is something more to it and are seeking an answer beyond that are wasting their time.

* * *

The article could not have spelled out more clearly the worries swirling around the magical returns of the Madoff funds. Although in a small niche publication, there were later articles on the same theme in the prestigious *Wall Street Journal* and *Barrons* (a financial magazine with huge clout in the USA). More importantly, however, in Austria – nerve centre of Sonja Kohn’s operations – the *FONDS Professionell*, or Fund Professional, magazine repeated all the claims in the original article in an issue published in May 2001. But nothing happened – neither in America nor in Europe. Investors continued to flock to Madoff, and in Austria the Sonja Kohn ‘powerhouse’ didn’t even pause for breath as it continued to expand its money harvesting network for Madoff.

Could they claim that they had not seen any of the reports? The answer is no. The proof of that is in a letter to BAWFM in 2003 from the law firm Kaye Scholer. Instead of using Aksia or one of the professional companies to do due diligence on Madoff – BAWFM had hired a top law firm - one that, while being world leaders in litigation, might not have been regarded as the best option for checking out Madoff.

Could it be that BAWFM wanted to avoid a firm like Aksia that might have told them something they did not want to hear, or could it have been that they were giving an assignment to a law firm knowing it would block that law firm in taking any later action against them as they were then a client, and additionally might struggle to answer if BAWFM were to ask them why they had not spotted the fraud?

Whatever the reason, all Kaye Scholer did was essentially a trawl of the Internet for data that they then filed back as a report to BAWFM - interestingly though what it did find was the Michael Ocrant report and quoted the fact that in 2001 Madoff had 6 to 7 billion under management, and that it had been added to since then.

It would also have been possible via the Internet back in those days to check whether he was authorised to act as a fund manager as the report stated, which of course he wasn't. The only reason to avoid registration would have been if he'd had an organisation too small to register – but if there was any doubt that he was a big player this report confirmed it. So even if BAWFM managers said they had not read the magazine report, the Kaye Scholer report was something they had commissioned. Therefore someone must have read it.

That person though may not have been Ursula Radel-Leszczynski, three days after the Kaye Scholer fax was sent she was writing to Hans-Jörg Stemeseder, in charge of auditing Bank Austria's international business. She wrote: "I am enclosing a report from the US *lawyers* Friehling & Horowitz." She then passes on reports from Madoff's *accountants*, Friehling & Horowitz, detailing Primeo Fund Class B figures that were being discussed with Ernst & Young. By this point she had been head of BAWFM a year and she still did not know the name of his accountants or the difference between an accountant's balance sheet and a legal letter.

[illegible]

[illegible]

Some of the evidence against UniCredit Bank Austria is outlined clearly in this book (in the three years UniCredit was fully integrated into the conspiracy its feeder funds pumped \$4,636,467,940 into BLMIS). But the evidence against JP Morgan Chase is also worth a mention. Picard pointed out that they had demanded \$250 million – their entire investment in the Fairfield Sentry Fund – as well as investments in other Madoff managed funds including the Herald Fund in September 2008 – the time when his slush fund was almost used up.

They would have known that his funds were gone, they had held his account since 1986 when they were the Chemical Bank that eventually became JP Morgan Chase, the bank that managed Madoff's money up to the end. They knew exactly how much money he had in his bank accounts – as they were the primary banker used by Madoff. The allegation was that it was wilfully blind in its dealings with Madoff, and

had ignored its own executive's clearly documented suspicions about him over the years.

In the Trustee's case it pointed out how John Hogan, Chief Risk Officer at JPMorgan Chase on June 15, 2007, had written: "For whatever it's worth, I am sitting at lunch with Matt Zames who just told me that there is a well-known cloud over the head of Madoff and that his returns are speculated to be part of a Ponzi (Pyramid) scheme."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A document in the TLM Files shows clearly that Bank Austria officials were among those that had been told the continuing, baffling Madoff success story was based on front running. It is a summary of visits made by bank staff BLMIS starting in 1998 and ending in March 2000 with regards to the bank's own Madoff feeder fund, the Primeo Select Fund.

The document that is also referenced in a later Bank Austria internal audit details a meeting between Bank Austria staff and Bernard Madoff, his son Mark Madoff and his deputy Frank DiPascali.

It comments on the methods of Madoff – pointing out that the split strike strategy that had been in use since 1989 meant that the portfolio was always fully hedged and protected on the downside in case of market decline but limited on the upside in a bullish market. It said that Madoff did not use leverage (which means he didn't borrow money to fund his activities and therefore had no debt). Frank DiPascali further explained the strategy by saying: "If a larger drawdown occurs we lean back, watch the market and rely on our hedge – we never sell in panic. If the hedging is correct, it should work."

It noted that Madoff often converted everything to cash and that the average performance of Primeo select was around 15%, confirming that he was not even always in the market. But the really crucial point to the whole memo was on the second page where it said: "The strategy is strongly supported by special computer systems with custom-designed computer programmes. The investment decisions are however fully discretionary performed by the managers. BLMIS does not pretend to be able to see the direction of the market in the future, but as Frank DiPascali put it: 'Maybe we can predict only the next 10 or 15 minutes but we watch the market continuously and if we get in an order to buy a large stake of equity which is quoted currently at \$40 with a limit up to \$44, there can't be anything wrong with buying the same stock for our portfolio at \$41 or \$42'."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Why to-date has nobody been charged in Austria?

People like Kretschmer, Hemetsberger and Kohn who wrote books and magazine articles on the financial markets. Why else would Hemetsberger be earning millions sorting out the financial fraud in Salzburg if his knowledge was not encyclopaedic of such matters? And somebody like Sonja Kohn, a qualified professional who had had her own bank, who could recreate a structured product in her head in the middle of discussing a deal with a client, who had been honoured for her financial acumen right up to the end, and who had organised deals transmitting at least nine billion dollars to Madoff.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The evidence that emerged after Madoff's arrest showed how the Madoff universe moved, and where its stars were located, but it also showed a picture of a Universe with a very large black hole, a black hole that centred around Sonja Kohn and the members of the Bank Austria Conspiracy who she sucked into her orbit. Individuals who not only must have known it was a con, but who actively engaged in fraudulent activity themselves to set that network up. People whose activities were designed to give an international dimension to a planned, serious, organized commercial fraud implemented in clear support of a major Austrian investment group.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As the previous chapter showed, in Madoff's US operation, the structure has been taken apart and put back together in thousands of newspaper articles and books. But in Austria? The trustee had the budget thanks to SIPA, which maintains a fund intended to protect investors against people like Madoff. But they did not have the connections, and certainly not the understanding of the way things worked. Picard probably didn't realise that anyone seen to be helping him might just as well forget ever doing business in Austria again. The end result was that the trustee spent \$1.1 million paying Austrian lawyer Ewald Weninger, who had then allegedly simply handed over everything to the other side, his strategy, his secrets, his information. Did that include the people he had interviewed in confidence?

Picard sued Ewald Weninger and his company, Ewald Weninger Rechtsanwalts GmbH, demanding back the fees he had paid in a complaint filed in the U.S. Bankruptcy Court for the Southern District of New York. In it, Picard claimed Weninger "was a faithless servant". He added that Weninger betrayed him, revealing his documents, strategies and tactics to "one or more third parties."

But while Weninger may have not revealed much of use to the Americans, the Austrian operation was brought sharply into focus thanks to the TLM files. Information that offered the chance to shine a light on just what the situation was in the Alpine Republic, and the truth of the trustee claim.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But there was a small group of experts that set about digging through the TLM paperwork over the next month and at the end produced a

confidential, and anonymous, report, and a series of diagrams, all based purely on the evidence and no prior knowledge. As those behind it were experts from the financial and legal sphere, it was a project of experts, or Project X for short.

The conclusion: That Sonja Kohn and a small group of senior banking executives centred around Bank Austria had established a network of companies over the two decades prior to Madoff's collapse purely for the purpose of feeding money to Madoff – and bypassing the regulators. Starting in the early 1990s, the members of this conspiracy had built up an international network that had no other purpose other than to transfer capital from investors (private and institutional investors) into the pyramid scheme belonging to Madoff.

To quote the report: “To enable this, countless companies were set-up worldwide. These companies took over various functions of other companies, in particular management, advisory and valuation functions.

“This complex and confusing international corporate structure operated on a system of reciprocal participation. Here, Kohn secured influence either personally or through her officially owned companies or trust companies. In this she managed, for the most part, to keep secret the full dimensions of the capital transfers she was involved in, estimated to be about nine billion dollars. Similarly, in each of the agreements, whether management or consulting agreements, non-standard contractual terms were employed that were a clear attempt to bypass the rules. This further muddled the waters of what should have been a basic form of transparency between two or more contracting partners.”

Or at least it should have been, if it was carried out with the “care and diligence of a prudent business”.

Project X continued: “What the conspiracy members did over dozens of meetings with Madoff, Kohn and each other was to create a simple basic plan for a fund that was to be the master fund, the fund that would be the model for all the other funds. Designed so that it could be easily set up, so that it could bypass the rules designed to protect investors, and so that it could be copied to create the rest of the network that was eventually to exist around the members of the Bank Austria Conspiracy.

“As the scheme expanded and new funds were tacked on, little changed to the basic structure. The central fabric remained intact. It was only in the sales method that there was really any change, in response to the need to create new product classes, even if they were all essentially clones of the master fund. The result was that while the

structure experienced a change in its size over the years, its basic strategy remained identical. This was essential to disguise the true dimensions of the Madoff pyramid scheme, at least if it was to exist over any length of time. Right from the start it was clear this had been set up in a way that allowed the transferring of large amounts of capital from investors without allowing anyone to recognize its real dimensions.

“A company set up in such a way as this, which was rolled out internationally, can only function through the use of excellent political contacts in each country. This political dimension - without which this entire façade could not have functioned - pervades the entire business concept.

“Politicians were first found to provide political influence which would enable rapid and efficient implementation of the corporate and technical foundation of the company network. After the successful establishment of each new company, these same politicians could then expect highly paid executive functions within the structure. This was implemented perfectly and ruthlessly, particularly in Austria, but also in Liechtenstein and Gibraltar.

“The significance of Bank Austria cannot be underplayed, as it was clear that a central ‘processing platform’ was required that had a sufficient reputation and market standing to act as the hub. And furthermore, it needed to have sufficient resources both in terms of technical expertise and personnel to further oil the cogs of the machine. The processing platform, technical and staff resources were essential if the network was to be set up in a sustainable way that would both guarantee and implement a global system of cash transfers.

“For that, Bank Austria was perfect, but it was also clear that there was a problem. Even with key people in place at the top to prevent too much insight to those lower down the chain of command, there was still the risk that the true purpose of the network would be discovered and the pyramid scheme would be exposed. At the end of the day, Bank Austria was a big organization with all sorts of internal checks and controls, and there needed to be a way to negate those permanently.

“For this reason, the Bank Austria Conspiracy team and Kohn developed a structure which used the banks existing administrative structure, but also ensured that the decision-making only occurred in outsourced companies overseas. The countries chosen for these outsourced companies were chosen on the basis that they had less robust and regulated legal system than Austria.

“The corporate bodies of these companies were once again occupied by the Bank Austria Conspiracy inner circle, who were constantly involved in the transactions and dealings needed to make sure the scheme ran smoothly. Only with a structure like this was it possible to maintain a system that had the sole purpose of bringing capital into the pyramid scheme for years on end. And the network continued to grow throughout that time, through the number of contacts it had, the level of organisation, and the size of its structure – but always at the end of the day with the same simple aim of allowing the uninterrupted flow of investors’ funds.

“To work properly, it needed a product that had wide appeal. Ideally, they needed something suited to as wide a spectrum of investors as possible, whether institutional or private, long term or short-term. And it needed to be able to demonstrate continuing, stable and convincing yields with capital guarantees.

“The truth is of course that a ‘dream product’ like this did not exist. It might exist in a fantasy world but not in the real world, not if it was legal at least. The members of the inner circle were all too aware that without illegal insider knowledge, or the magic of the philosopher’s stone, it was not possible to generate more predictable returns. They knew it because almost all the members of the inner circle had a form of economic or mathematical education and - through their respective professional functions – all had ongoing contact with the realities of the financial markets. Some had contributed articles to academic journals, or had written books on topics relating to the financial markets.

“It meant they not only had the financial skills to create the sort of complicated and entirely fabricated construction that would fit the profile of the ‘dream product’, but that they also had the information and the knowledge to know what was behind it all, and that the whole scheme was a fraud. There can be no other reason to explain why Kohn, Madoff and the inner circle went to such lengths to negate the due diligence processes.

“These processes, as they would have all known, are an essential and fundamental part of every institutional investment decision, yet they were simply and deliberately bypassed. Madoff was deliberately presented as an untouchable Wall Street ‘guru’ who, merely through his own access to the market, knew more than other managers. They knew that this aura of expertise and his consistent performance would be plausible for many ordinary investors.

“And so the first product went into trial – and the Bank Austria Conspiracy members saw that it worked better than they could have hoped, and they quickly moved to expand it with several more products that could be incorporated easily and seamlessly into the international company network, a network which had been specifically set up for this purpose.

“The variety of products was deliberately made as complicated and confusing as the company structure itself to conceal the fact that when all is said and done, all they did was take cash, hand it to Madoff, pocket a fee, take money back from him, pocket another fee, and then give what was left back to the client. Madoff was at the peak of the pyramid, responsible for the ‘content’, and at his side was Kohn and the others who had the criminal energy to develop the feeder fund supplier’s network and to keep it working.

“With Kohn, her companies and her contacts on one side and the Bank Austria sales team on the other, the conspiracy then moved to spread the feeder fund network aggressively worldwide. This meant developing the necessary international reputation required for the purpose of supporting sales, and they worked together to make sure Kohn was honoured with business prizes. She was given her own private bank, and well-connected people for its board. Kohn was able to obtain the necessary concessions for her business easily and promptly using her business and political connections. On October 30, 1996, she became an Official Advisor to the Austrian Minister of Economic Affairs, and was able to garner further support for her network in return. All of it was designed to increase her standing, and make the products more believable.

“At the same time the conspiracy generated ever more complicated technical, organizational and economic management systems to keep up to date with the ever changing laws governing funds, and to bypass regulators. These were then made available to the Bank Austria sales team network.

“The inner circle in charge at Bank Austria also made available the much needed loyal and discreet staff for key positions in numerous companies in the international corporate network. In some cases these were chosen not because of their ability to understand and help expand the network, but because of their lack of understanding. They did as they were told and asked no questions because they did not have the ability to ask questions. They simply did not understand what they were involved in, and as long as the money rolled in, it was a powerful incentive not to care.

“The number of the inner circle under suspicion is over two dozen. These people, in addition to Kohn and Madoff, were responsible for a fraud case - the dimensions of which have never been seen in Austria or indeed anywhere else - and had also never even been thought possible. They were people that were at the heart of Austria’s political and economic inner circle, and they were not just people with access to best lawyers, they included one of the best lawyers.”

[illegible]

[REDACTED]

[REDACTED] In no

order of importance those names that were identified included Sonja and Erwin Kohn, Gerhard Randa, Stefan Zapotocky, Peter Fischer, Peter Scheithauer, Wilhelm Hemetsberger, Friedrich Kadrnoska, Werner Kretschmer, Harald Nograsek, Josef Duregger, Ursula Radel-Leszczynski, Daniele Cosulich, Robert Reuss, Susanne Giefing, Andreas Pirkner, Andreas Schindler, Alessandro Profumo, Gianfranco Guty, Werner Tripolt, Helmuth Frey, Manfred Kastner, Willibald Cernko, James O'Neill, Alfred Simon, Johannes Koller, Erich Hampel, Wolfgang Feuchtmüller, Nikolaus Hetfleisch, Karl Kaniak, Hannes Saleta, Nigel Fielding and Christian Hausmaninger.

It continued: "Madoff and Kohn fused together as a commercial entity in her US company Eurovaleur. It presented itself as having been established for the purposes of product innovation and global research. But its most important role was to build the contact between Bank Austria and Madoff.

"And by Bank Austria, that meant at the top Gerhard Randa followed by Stefan Zapotocky, in whose department was the ambitious newcomer Werner Kretschmer."

With his need to raise money Randa realised that Kohn offered potential, and he provided her with a series of “sweetheart deals” including access to shares of some of Bank Austria’s many affiliates at steeply discounted rates. Kohn would sell these shares to other investors and pocket the difference, leaving her with a slush fund to act as an unofficial agent for the bank. She would for example fly Bank Austria executives backwards and forwards to New York to meet potential investors, including Madoff.

Of course Bank Austria would eventually repurchase these shares at market value, resulting in financial losses to the bank, but such was his position by this time that there were none that could go against him. The unauthorized insider deals were 100% Randa’s idea, and when Bank Austria’s Head of trading, Zappi Holzer, discovered this arrangement he was surprised and furious, yet nothing happened.

After all, Randa was the boss and he was also doing well out of the deal both personally and for the bank, and that did not just mean through Madoff. In October 1998, the descendants of Holocaust victims sued Bank Austria in the Southern District of New York for appropriating their relatives’ property held at Bank Austria accounts. This property included gold, bank accounts, stocks, bonds, and contents of safety deposit boxes.

Randa travelled to New York several times to meet with high-profile Jewish leaders, including Peter Cohen, in an effort to reach settlement – meetings that were organised by Kohn. The end result was that Randa successfully settled the Holocaust litigation in 1999 on behalf of Bank Austria for a reported total of \$45 million.

But according to the trustee’s RICO filing, between 1999 and 2000 Randa directed Bank Austria to acquire 24.9% of Peter Cohen’s successful hedge fund, Ramius Capital Group, for just over a billion dollars. It added: “Bank Austria and Randa personally received substantial fees for their affiliation with Ramius Capital Group.”

* * *

The Bank Austria link gave Kohn access to the highest levels of government, an access where she was able to peddle the best investments with official Austrian backing.

In a Bank Medici prospectus for a 2007 Kohn project called *Vienna, Your Investment Capital*, Former Chancellor Alfred Gusenbauer is pictured smiling at investors and quoted as saying: “I encourage you to bring your investment to Vienna – and make us Your Investment Capital. We will do everything in our power to build

on our unmatched advantages as a financial centre, and a place to live and visit – so you can enjoy many happy returns in every sense of the phrase.”

But it was not just at the national level that she was given support, and the ties between the town hall SPÖ and Madoff through Kohn and her Bank Austria conspirators remained strong. On page 20 of a Bank Medici investment prospectus from 2007, Vienna’s SPÖ Mayor Häupl appears in a full page advert under the headline “The Bottom Line: A Commitment to Investors”. It talks about a wide range of factors from superior bank secrecy protections to favourable tax positions as being reasons for choosing Vienna as a haven for private banking. The mayor is pictured smiling out from the brochure and is quoted as saying: “The city of Vienna has demonstrated that stakeholders join forces in all important issues, but honest and open discussions are encouraged, and that the common goal – namely to protect Vienna’s position as a sustainable business location – is being supported with sincerity and enthusiasm.”

Exactly 10 years earlier the mayor had been involved in media questions about another dubious Bank Austria matter – the death of Gerhard Praschak, where he had little sympathy with the man who exposed the *Lombard Club* and other banking frauds with his own death.

Häupl had rejected any role of political pressure in Praschak’s death saying: “Where is the political pressure when one five million Schilling job is simply exchanged for another five million Schilling job?” But he added that either way, as Mayor of Vienna he was not party to decisions over personnel matters. It never involved him, he said. That was despite the fact that he was chairman of the AVZ – which has a controlling stake in Bank Austria.

And who else is on the board of AVZ? Randa. Research for this book indicates that the two are firm friends, and even enjoy a regular cards evening together. Is it Häupl that has been able to help Randa to escape the consequences of his actions for so long?

The Project X report continued: “A further advantage was that new products were developed thanks to this political collaboration, which were not only issued with government guarantees (FFG), but which ultimately in 1999 brought Kohn the Decoration of Honour for Services to the Republic of Austria.”

That honour included a certificate that was signed by Hannes Farnleitner. Dated October 30, 1996, it said: “Dear Mrs Kohn, after many years of dialogue and in a

follow up of our recent conversations, I am delighted to welcome you as an ‘Official Advisor to the Austrian Minister for Economic Affairs’. I am looking forward to our future cooperation and remain cordially yours.” It was then hand signed by Farnleitner, who as is now known after his job as a minister went on to work on the board of Bank Medici.

And her FGG status guaranteed her new business opportunities with many other investors: It was a gold-plated seal of approval for her and her methods from the Austrian state itself.

Project X went on: “For his part, Madoff owned several companies including a UK-based company, Madoff Securities International Ltd. (MSIL), and a US based company, Cohmad Securities. These companies served as a vehicle for Madoff to make so-called kickback payments to those within the inner circle. MSIL and Cohmad in particular functioned as a payment platform for Kohn herself, who then presumably further distributed the funds to persons within the inner circle.

“Kohn for example was 100% owner and manager of Erko Inc., named after her husband ER-win KO-hn. But Erko was a sham device for making invoices for reports that were binned without being read, as was illustrated after it was dissolved in June 1998. Despite the fact it was dissolved another seventeen invoices were issued in its name between June 1998 and December 2001, which can hardly be explained away as a clerical error of some kind by an unnamed individual - as was later claimed by Kohn.

“Furthermore, other people from the inner circle received personal funds from the pyramid scheme. These included Werner Kretschmer in the time when he was entrusted with the founding of BAWFM, and Bank Medici and Ursula Radel-Leszczyński, CEO of BAWFM. Via this payment structure it was guaranteed that people within the inner circle remained loyal to the pyramid scheme.”

The name of Ursula Radel-Leszczyński comes up numerous times in the paperwork, she was reportedly taken on for a glorified secretarial role, but had complained it was beneath her qualifications.

She was certainly qualified, as far as it was possible to work out she had a degree – an art degree. According to her CV she got her qualification at Clayton University, that in turn has been named as a degree mill in the US, which means it is a University that simply sells degrees.

Whether it was a genuine qualification or not, she is certainly true to her art qualifications now, travelling around Poland and exhibiting her paintings and trying to distance herself from her financial past. Born in Kraków, Poland, she lives in Vienna, Austria, and on her home page describes herself as a painter who agrees with Shakespeare about lawyers - and who has gained more experience than she wanted in the financial industry. One of the reasons she was difficult to track was that in the time that she was involved with Madoff funds her name varied several times: Ursula Fano-Leszczynski and Ursula Radel-Leszczynski, or Ursula Fano and Ursula Radel.

As part of the conspiracy, she served as BAWFM president after 2000, and according to the trustee allegation that she is part of the conspiracy, was “responsible for its management and operation at all relevant times”.

When interviewed, she claimed that she had simply been a salaried employee, who was there to make sure things ran smoothly, but that the decisions were either ones that had already been made by Kretschmer, or if new problems arose then they were handled by her superior Alfred Simon.

It was not a new strategy for those who were part of the conspiracy. Even Gerhard Randa, when he was once confronted with the allegation that he had single-handedly ruined the Austrian bank landscape, did not deny it, but instead announced that he had simply been acting as the man that did what the shareholders wanted. By that he meant the *Anteilsverwaltung Zentralsparkasse*, the AVZ, which in turn is owned by the SPÖ dominated city of Vienna.

* * *

One of Ursula Radel-Leszczynski's former colleagues said it was well known that she joined the bank around 1996 with an arts degree, and had not previously had a financial background. He said: “She had studied the arts, she had been working at a general trading company where she was a secretary. Her boss then was a good friend of Zapotocky, they were together at the local Rotary Club, and when he closed the company down he wanted to get her a job, so he asked Zapotocky if he would take her on. So she got a well-paid job although she didn't have any idea about the banking business.”

So a woman who had no formal training, who only did a few hours a week at her job at BAWFM according to a later study, and who admitted that she had no management role, in fact who was merely a salaried employee that did what she was told, was allowed to be president of BAWFM, she was also director at the Primeo and

Alpha Prime funds, co-founder of Alpha Prime and Senator, and manager at Primeo, Alpha Prime and Senator. And she was later taken on in a senior position at UniCredit after it purchased Bank Austria. And not to forget, when she realised that the taxman was closing in on her, she revealed that she had “forgotten” to declare €1.8 million in fees for work in a field that she was not qualified for and turned herself in with a *Selbstanzeige*?

Qualified or not, it shows she was well placed to cash in on commissions that the trustee claims she was paid as part of the Bank Austria Conspiracy, and which also meant that she had frequent clashes with TLM on the occasions they met like Asset Management Days. During one presentation in Vienna in 2002 there was a heated debate between the two in which he pointed out that she didn't have the faintest idea about the business, and that what she was suggesting with such consistent returns was impossible – and the technical reasons why. [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Werner Kretschmer was furious with TLM and the clash was another example of why Kretschmer was named as one of four members of the alleged Bank Austria Conspiracy, and singled out by the trustee as a “suspect for criminal proceedings”.

Kretschmer was on the face of it a clear SPÖ man but he was also like Randa a “radish”, red on the outside only. It meant that the only thing that mattered to him was the party book and the links it gave him. He was the head of asset management at Bank Austria, and after the merger with the various banks coming together to create Bank Austria there was a lot of companies that the bank owned, firms where he was named as a director where he was basically controlling himself. It was a good opportunity to make money though the commissioning of reports.

The TLM files refer frequently to him as DDR, that has a double meaning in German as either a person with a double doctorate, like Kretschmer, or alternatively it can also refer to the former East German dictatorship the *Deutsche Demokratische Republik* (DDR).

Insiders confirmed that when he was seen approaching the call would go out, “DDR is on the march”. DDR, the state and the man, both of which wanted to monitor what

everybody was doing, that demanded total control and did not allow freedom of opinion. He would stage regular 6am breakfast meetings in Bank Austria's headquarters in Vienna together with Kohn at which other Bank Austria officials involved in the Primeo business were ordered to attend. Kretschmer's responsibilities at Bank Austria included oversight of investments and that included the creation of Primeo Fund and then serving on the fund's board, something of which while it was winning awards and generating profits he was extremely proud of advertising, at least until Madoff was exposed as a fraud. After that the subject was quietly dropped. Few people now mention that he was responsible for setting up, or indeed that he was the one who oversaw Bank Austria's direct account with BLMIS.

Yet given that Kretschmer was one of those who conceived the Cayman Islands-based Primeo Fund at meetings in New York, prosecutors in Vienna have shown remarkably little interest in taking the matter forward.

That he ended up at the top was no surprise, and ever since he was taken under the wing of Zapotocky, Kretschmer was a busy man taking on ever more responsibilities. He was the developer of many of the Madoff structures and kept a tight control on their implementation and management. Kretschmer also had responsibility for private banking at Bank Austria. And with these big private banking customers he had even more opportunity to place Madoff with wealthy clients. He also had access to the brokerage customers. These are really customers that buy and sell stocks from a board portfolio on a daily basis. They make big investments.

According to the TLM papers he also had a lot of side deals going on. Can it be true for example that he had two traders that had complete freedom on their deals? That meant permission from the bank's internal audits department where they had the exception to do their business through other bank trading departments. Other employees of the bank had a duty to make business with their own bank, the so-called *Kontrahierungszwang*, and by going outside the bank it meant Bank Austria had missed out on fees. In the Viennese Financial Community dealers always wanted to place orders with the trading companies where they got the highest kickbacks.

But if it is true then it was merely a continuation of the tradition that had started with the feeder funds in the Madoff network that also paid provision fees – the trustees would later call these kickbacks – but they can also be called sales commissions. But whatever you call them it meant basically a tangible reward and a

powerful incentive to those who bought in new investors. And at the end of the day the real risk of loss was borne by the investors, not the funds.

Kickbacks were also debated in the legal wrangle over the HSBC role in Madoff, with the bank accused of cashing in kickbacks by the trustee who said they “agreed to look the other way and to pretend that they were ensuring the existence of assets and trades when, in fact, they did no such thing.” Instead they merely delegated their job to Madoff, and what they were paid was “nothing more than kickbacks for looking the other way while legitimizing Madoff through their name and brand, and making it attractive to investors.”

* * *

Included among the TLM files are two crucial reports in which the bank’s own internal audit department raised serious concerns about the BAWFM operation. It said that despite the fact that it was offshore there was a clear case that the bank was still 100% responsible for the activities of BAWFM, and said urgent changes were needed.

The first report was for 1999-2001, looking at BAWFM, where clear concerns were raised, and the second for 2003 looking at BAWFM or rather at part of BAWFM, namely the Primeo Select (Euro) Fund. Despite urgent problems in the first audit raised in 2001, it was clear by 2003 that nothing had changed in tackling those concerns. Indeed, the only usage that the BAWFM team seem to have made of the reports was to use them to work out what the complications might be, so that they could get round them.

In the bank, the purpose of the audit was to check two points, that the financial laws and regulations were being applied in the section audited (in the 2001 audit that was BAWFM and in the second more specifically a BAWFM fund) and secondly that the bank’s own internal rules were also being applied.

The first report shows all the people involved at BAWFM were Bank Austria staff, as at this stage the merger with the Creditanstalt had not yet come into force. That meant those who received a copy of it were Randa, Samstag, Kadrnoska, Zwickl, Nograsek, and of course Radel-Leszczynski. Nograsek interestingly was later to deny that he knew any internal audit had ever been done for BAWFM, even though named on this document.

Harald Nograsek is currently Chief Executive Officer of the Austrian Travel Office, (*Österreichisches Verkehrsbüro AG*) which is Austria’s leading tourism organisation including hotels and travel agencies. He was the predecessor of Duregger in the BA

subsidiaries department; he was allegedly the driving force between the closing of Primeo for new investors in 2003. He had worked at Bank Austria from 1991 to 2004 and in 1991 served as the Head of the Subsidiary Division. In 1997, he became the Bank Austria employee responsible for all subsidiary investments and was a director of BAWFM, Alpha Prime Fund, and Primeo Fund.

On page number one of the 2001 report it points out that BAWFM was responsible for several hedge funds as the investment adviser with the job to assess risks and opportunities – the so-called swot analysis. It did not mention this was a job they did not do. It says that BAWFM for “some of the funds” was using third parties to do the job – these firms include MSIL or the Bank Austria-owned Ramius Capital Group. What it did not point out was that MSIL was Bernie Madoff and the Ramius role was also Madoff.

Bank Austria took over 24.9% of Ramius in March 2000 from the former Lehman Brothers boss Peter Cohen. By 2007, it had €400 million invested there.

It also points out that there is a problem with one of the investment advisers, namely with the manager at MSIL who was responsible for some of the funds (it was Madoff, and he was responsible for all of the funds) because they did not have a written contract with him. It adds: “If, because of the market position of the partner, it is not possible to get a written agreement then a real-time check of individual transactions is requested”. This meant as the trades happened, not three days later on faxes or in handwritten notes from Sonja Kohn. But it never happened.

[REDACTED]

In the internal audit it also accepts that it might not be possible to get Madoff to sign a formal deal, accepting that Madoff was too important in the market to trouble. Can it really be that Bank Austria, that had only recently taken over Creditanstalt and was one of Europe’s top banks, could not demand to be an equal partner with Madoff from the start?

The internal audit however seems to accept a contract may never happen, and so makes an alternative suggestion that in this case they need to have tighter monitoring of the fund. The audit then lists all the different commission agreements and of course at this point Bank Medici didn't exist so its place was taken by Eurovaleur and BA Cayman Islands. The rest of the diagram starts to give an indication of all the different organisations that were cashing in. Given that all that happened as already said was that the money was collected and sent to Madoff, there is a bewildering number of links through which it was creamed off. All companies that were doing something for nothing.

The audit report also says that BAWFM was responsible for the conception of the various hedge fund products such as Primeo Fund Ltd, Primeo Multi-Manager Ltd and Thema International Hedge Fund plc. BAWFM was also responsible for the presentations of these funds, including the prospectus, the contracts and the investment strategy of the fund, and the choice of the fund managers (sic). The latter was easy, Madoff or Madoff, and as for the other things it listed, BAWFM simply didn't do them. Neither did they do the monitoring of the performance as laid down in the audit, in fact on the list the only thing they did do was the annual statements. But then again this was the way their commissions were worked out, and that was something they never forgot.

The audit points out that for tax reasons, at least with regards to Austrian tax law, two BA CA directors had to be so-called *Devisenausländern*, meaning overseas Bank Austria staff, who were taken on to make sure that the fund filled the requirement of having at least 50% of the board staffed by directors from abroad. As a result Didier Harand from Bank Austria Paris and James O'Neill Bank Austria Cayman Islands Ltd. were appointed to the BAWFM board. And that was enough to give them tax-free status. Despite the fact that BAWFM was owned by Bank Austria, staffed by Bank Austria people and most of the work was done in Austria, they still didn't need to pay any tax, according to the internal audit.

And then the audit summarised its conclusions. Point number one of course, and first and foremost: BAWFM is highly profitable

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[REDACTED]

The second point after profit is that there is a fund and the fund manager says everything is okay, basically saying nothing.

The third conclusion point is that although everything is okay they need to introduce tighter controls because of the fact that third parties are involved.

Fourthly, they needed to get a written agreement with the “manager” – with Madoff.

The 2003 audit which is equally damning is dealt with in more detail in the next chapter, but the key point is that seven years later, on the eve of Madoff’s arrest, none of the problems had been tackled, they were still saying everything was OK, still waiting for a signed agreement, and still not doing the checks they were paid for.

* * *

The Project X report noted that since its founding in 2003 Kohn through Bank Medici had attracted a lot of investors by offering to help them avoid taxes on that investment.

And the network was becoming ever more sophisticated to keep that happening. Sonja Kohn’s Bank Medici was already reaping vast sums through the management fees and performance fees it was getting, and these were in turn passed on to companies which were under her “economic control”. These drew in still more by arranging consultancy agreements and other deals with Madoff’s BLMIS and its subsidiaries like MSIL in London, and there were then further consultancy deals with Bank Austria staff and subsidiaries, creating a structure of incredible complexity. And all designed at the end to hide the commissions or “kickback” payments that were at the heart of it all.

For the Project X experts it was a clear breach of the law: “The members of the Bank Austria Conspiracy lied about some things, and hid others with the aim of getting investors to put money into the funds. The prospectuses misled people about

the aims of the investment, the methods of the investment, the type of investment and the control functions.

“Bank Austria and Bank Medici’s management acted in this way to get fees, which in this case were payments for which they did nothing. There were no high-powered analysts, no top traders, no senior economists keeping a keen eye out for the wealth invested. Instead the money and its effective management was simply given to Madoff. And he managed nothing, but stole everything. The greater the assets, the greater the commission became for those involved in the scam.

“Under Austrian law, § 26 paragraph 2 of the Investment Funds Act 1993 it says that the prospectus for an offshore fund needs to be checked by an independent auditor. For many of the Madoff feeder funds, this was Bank Austria, which is therefore liable for the contents.

“As it turned out the information on the prospectus was so deficient that based on issues of liability, it could give rise to charges of gross negligence and of committing serious commercial fraud. In fact, because the deception led to investors losing money, members of the Bank Austria Conspiracy could also be charged under the criminal as well as the civil code, and not just over the fraud. The crime of disloyalty was also committed. They were effectively promising to manage assets that were instead simply handed over to BLMIS.”

[REDACTED]

Project X adds that a major hurdle in Austria has been the lack of action by the prosecution. “The delay in the onset of criminal proceedings has led to an unnecessary increase in both distress and costs for the victims. Investors have to make claims within a certain time under the statute of limitations, which is three years for civil proceedings.”

Could that be the reason for the delay in criminal charges? The deadline for the civil cases in the Madoff case has after all already long passed – it was the November 15, 2011.

Many did meet that deadline and filed civil cases, which turned out to be wise. If they had waited for any criminal action ahead of civil justice, the statute of limitation would have made their claims invalid by now. But their cases too have been stalled, in many cases awaiting criminal charges that are still not happening.

As the report pointed out: “If the criminal proceedings had been pursued vigorously, and the assets of the accused had been seized immediately, things would not be as bad for the aggrieved investors as they undoubtedly are now. In Austria, at the time this report was written in 2013, there has not been a single criminal case levelled relating to the Madoff affair.

“It raises the question as to whether the Vienna public prosecutor’s office, the *Staatsanwaltschaft Wien* (STA Wien) has really been doing everything in its power to track down those responsible. Has the STA really conducted investigations seriously, filed charges in a timely fashion, provided judicial assistance in order to help the affected investors with matters relating to foreign bank accounts and related information, and acted swiftly and efficiently in the interests of the investors.”

The answer to that was a clear ‘no’.

“In several letters to Vienna prosecutors their opposite numbers in Liechtenstein had tried to secure an update on the current state of affairs in particular relating to Kohn. It pointed out that Kohn owned several bank accounts at the Verwaltungs-und Privat-Bank AG. These included the PrivatLife Ltd account, registered no. 50,351,982; Starvest, registered no. 50,353,148; and Lifetrust, registered no. 50,353,147.”

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[REDACTED] Lichtenstein prosecutors were concerned that the money was in the process of being laundered. In a letter dated January 14, 2009, the Luxembourg prosecutor informed the STA Vienna that Herald Asset Management Ltd had commissioned two transfers of funds (\$6.5 million and €6.5 million) from a bank in Luxemburg to Hassans International Law Firm in Gibraltar, thus removing almost all company assets.

Hassans had a long-time working relationship with Kohn and her companies including Herald Fund and HAM. Bank Medici Gibraltar and Medici Realty were located in Hassans' offices and Hassans people held non-lawyer corporate positions in Kohn firms. The trustee said that they were "part of a complex corporate structure designed to hide the fact that Kohn and her husband were the effective owners of HAM, and to hide Kohn's ownership of Tecno Gibraltar".

The question is why did the STA Vienna take no documented measures to secure access to these accounts or to encourage the pursuit of these lost funds? They would only have needed to request judicial assistance from Liechtenstein officials and it could have happened. That data should have been a basic first step in securing essential evidence when addressing issues of fraud and embezzlement in the main court proceedings.

And not only did the STA Vienna not take these steps, but on the contrary, on several occasions the Liechtenstein authorities requested, in vain, for the STA Vienna to take action.

The Swiss too had little luck with the STA Wien. On September 2 and December 7, 2009, the public prosecutor of the Canton of Zurich passed on information about a suspicion of money laundering relating to the mother of Kohn, Netty Blau, aged 92,

who held two accounts, a dollar and a euro account, as well as a safety deposit box with Credit Suisse bank.

After learning of the Medici allegations relating to the Madoff affair, a rarely visited safe deposit box suddenly came to be used with noticeable regularity by Kohn's husband, Erwin Kohn, even though it was in the name of Netty Blau.

A second account, named the *Sachertorte* account, and opened in Lugano, attracted attention when two check remittances from the years 2005 and 2006, each for EUR 25,000, turned out to have had Netty Blau signatures the authenticity of which appeared to be at best questionable.

[REDACTED]

This activity or rather lack of it shows that the STA Vienna did not in any way try to secure the assets of the Kohn family and others.

It remains completely unclear why today all the accused in the Madoff case remain at large and with unfettered access to their money. For Kohn and the inner circle there was without doubt a danger that they would act to hide evidence, hide assets, and even flee should they eventually face justice. But unlike their enthusiasm to lock up the likes of Julius Meinl, with the Madoff case the STA Vienna has shown no initiative, and simply lets the alleged masterminds walk free.

* * *

The Austrian Madoff prosecutor Michael Radasztics has been accused of abuse of office. Can it be true? An insider at Bank Austria confirmed he was linked to the SPÖ, and his reputation as a prosecutor to-date has been built on success in cases that are almost exclusively against proponents of the former black ÖVP and blue FPÖ government. He has no track record of pursuing court cases against SPÖ linked suspects, and the Madoff case is clearly one that is nothing but bad news for anyone from the red side of the political spectrum.

As mentioned Radasztics pursued the British banker Julius Meinl for his alleged role in a two billion euro alleged share scam with almost religious zeal – a case still

going through the courts – yet why has nothing been laid at the door of a woman closer than any other except his wife to Bernard Madoff?

Until June 30, 2005, Radasztics worked as a lawyer and then changed to the STA Vienna. As a spokesperson and co-director of the Economic Group of the STA Vienna, he worked on headline grabbing cases: Mensdorff-Pouilly, Julius Meinl, Euro Fighter. He was appointed as a senior prosecutor by Werner Pleischl, Lambert Schöffmann and Hans-Peter Kronawetter, all in a close relationship with the SPÖ-linked BSA (*Bund Sozialdemokratischer Akademiker*).

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As well as her connections to politicians it was her business network at Bank Austria, starting with her friend Gerhard Randa, that allowed her to move through the upper echelons of society, harvesting money for the fake Madoff enterprise in New York. It was Randa who stepped in to help her obtain a banking licence in good time from the Austrian Financial Market Authority (FMA). And as mentioned two former ministers of the Austrian government helped her by joining the Supervisory Board functions of the bank, bringing their until then unblemished reputations to the project.

As Project X concluded: "A sound and proper control function was never exercised in this charade of friendly palm greasing played out on the international financial stage. Kohn was rewarded with lavish honours. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Once she had been made an employee of Bank Austria, Kohn had access to a ready-made network of greedy SPÖ bankers, eager to exploit their relationship with her to make ever increasing sums of money. For their work, they were rewarded with powerful jobs outside of the bank once the Madoff bubble had burst for good."

Names like Friedrich Kadrnoska or Harald Nograsek, once top managers implementing Madoff feeder funds at Bank Austria, are today entrusted with the management of the private foundation for the management of equity. In other words, AVZ.

Nograsek, who was at Bank Austria from 1991 to 2004, was named by BakerHostetler as part of the Bank Austria Conspiracy. But it seems his Madoff links

have had little impact on his career. His strong SPÖ connections were proven not just by the fact he was appointed to AVZ but also by the fact that he worked at the 'Z' where it was essential to be a card carrying party man. He was the head of the Subsidiaries Division in the International Business department. They would have decided on for example whether a new project should go ahead offshore in the Cayman Islands.

In 1991, Nogrsek served as the Head of the Subsidiary Investment Division at 'Z' Länderbank (Bank Austria). It was a classic conflict of interest, as in 1997 he became the man at Bank Austria responsible for all investment decisions with regards to subsidiaries, but at the same time was a director of BAWFM, Alpha Prime Fund, and Primeo Fund. He was deciding on investments of projects where he was then expected to carry those instructions out. In effect, he was also reporting to himself.

[REDACTED]

Taken together, it shows that the biggest global financial scandal ever could not have happened without the active involvement of key SPÖ members of the Austrian government in the 90s and the Vienna city government. Top bankers, politicians, economists and investors and their related organisations who fused together to assist in the greatest fraud in history. And no one but no one in Austria is being called to account for it. These people, political leaders and top bankers, did not support Kohn and Medici for altruistic reasons, but had a strong personal enrichment intention involving high kickback payments. This group used its political and economic influence within the judiciary to have party-affiliated prosecutors and friendly judges assigned to Madoff matters. And this group has effectively allowed the inner circle at the rotten core of the affair to escape punishment.

Together they show that whatever else it is, it is not justice.

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Whether they were aware of his fraud or not, Madoff had an army of people that made it possible.

From his shadowy 17th floor offices he deployed a web of sales teams who captured tens of billions of dollars of investors' money in his so-called feeder funds which funnelled the money directly to him. These feeder funds were established exclusively for the purpose of investing in Madoff, in New York, in what was effectively one integrated and coordinated operation. And at the heart of that operation was his gatekeeper, Sonja Kohn, and the members of the Bank Austria Conspiracy that offered exclusive access to *the club*.

According to the trustee, when Sonja Kohn left America to return permanently to Vienna, she took with her millions of dollars from Madoff to help get her Medici network up and running.

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[REDACTED]

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[REDACTED]

Together with her Bank Austria friends Kohn used Primeo as the basis from which to create more feeder funds that in turn had feeder funds of their own, creating a vast, worldwide irrigation system that sustained Madoff's fraud with steady high-pressure streams of cash.

The basic structure of Primeo had taken time to create, time and a lot of meetings between senior Bank Austria officials and Madoff in New York. The end result was a fund that was to be the model that all the other later funds would follow.

The Bank Austria Conspiracy needed a fund capable of feeding money to Madoff, that was capable of replicating itself easily to feed still more money to Madoff, and at the same was set up so that as few people knew about where the money was being sent as possible.

But even more importantly, they needed to make sure that once Madoff had the funds, he could do with them what he wanted, and that meant they needed to find a way to bypass the checks that the law, and regulators, insisted should be in place. As Project X noted, the only way to do that was to build in a strategy for negating the separation principle which should have been at the heart of any professional fund: That the custodian of the money and the manager of the money (broker) needed to be separate.

It was not just common sense, it was also the law, and was for example demanded by paragraph 23 of the EU wide Investment Fund Law which makes it clear that the manager of the fund has to be in *separate* hands to whoever has the job of custodian. The reason? It means the manager and custodian can check up on each other. If it is in the same hands, then the person that holds both roles will be effectively checking up on themselves. To ensure this principle was enforced, the prospectus of the fund had to be handed to regulators in the country where it was issued – and in Austria this was done by the Financial Markets Authority (FMA). That gave the FMA the chance to enforce the rule, assuming that it was admitted in the prospectus that the separation principle had been broken. But as Madoff's victims were to find – the prospectus was only checked to see if what it claimed it was doing was correct – not if it was true. It was believed that a bank would not lie.

[REDACTED]

[illegible]

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The author then explained how the Manhattan Fund fraud had worked to illustrate the danger. And who was the author of that book? It was Dr Ursula Radel-Leszczynski, the head of BAWFM, who should have been implementing exactly the controls that she was advising others not to ignore. The lesson of Michael Berger and the Manhattan fund seems to have been completely forgotten when it came to applying them to her own job. In addition, it is worth noting that Bear Sterns, who had exposed the MIF scam eventually, had been ordered to compensate investors with \$120 million plus interest for failing to prevent the falsification.

But with BAWFM, which was to Madoff what Bear Sterns was to MIF, they seem to have been happy to ignore this basic principle for years on end. They assigned manager and the sub custodian role to the same person, despite the fact that Radel-Leszczynski at least knew that it was a massive operational risk. And so far, they have not had to pay.

[illegible]

[illegible]

They (The Bank Austria Conspiracy) demanded vast fees for their work, making hundreds of millions of dollars, and there was no evidence that any of it was ever used to do the checking they promised they were doing. If anything, it was used to work out ways around the law. And the money Madoff was paying simply encouraged a growing number of willing servants to ignore the blatant signs of his wrongdoing. Rather than identifying the red flags, the main preoccupation of those at the centre of the scheme seemed to be the constant review of ways of making the fees grow. The TLM paperwork shows that an enormous amount of criminal energy was devoted to just that, and exposes people who knew that they were doing next to nothing for what they were being paid, yet because of simple greed still found ways to rake off even more.

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In the TLM Files there is a reference from the year 2002 to Primeo Fund – normally sold by Bank Austria. But it was also sold by Sonja Kohn through connections, for example Vienna Portfolio Management (VPM) founded by Kohn's close friend and confidante Manfred Kastner. He owned and ran MediciFinanz and APM Cayman, which he had set up together with Kohn, and he was an employee of Medici Cayman from 2000 until 2001.

The e-mail is from a representative of Bank Austria at their office in Lower Austria who wonders whether there is a mistake in the calculation of commissions to the bank? The commissions he was referring to were money that was being paid to the Distribution (Vertrieb) Department where the e-mail sender worked selling the Primeo Select Fund. The commission was not a private commission, he was talking about the department fee that was important because it would turn up at the end of the year in his profit centre's accounting – showing how successful the Distribution Department had been.

The Bank Austria employee pointed out that the fund had attracted a good reception and a lot of clients wanted to buy it. However, he had noted from the prospectus that there was a management fee of 2% paid to BAWFM, and as far as he could see BAWFM was a 100% subsidiary of Bank Austria. Under normal circumstances part of the management fee – the so-called selling fee - would have been more than half of the management fee. That meant the Distribution Department where he worked could have expected around 1% on their account. But at the time of the e-mail in 2002 Primeo paid out only 0.1%. And he asked why it was so much lower?

He also questioned as to why VPM and Kastner, basically a private company and not part of Bank Austria, got a commission that was roughly double what Bank Austria was getting? Kastner, he was not to know, was one of those later named by the trustee as being involved in the Bank Austria Conspiracy.

Why? Without being on the payroll he was a very close contact of Kohn who rated him extremely highly. He was involved in selling the Madoff products, and as the

paperwork was to show was instrumental to her in a number of ways. So instrumental in fact that he got €600,000 from her, a payment she later said was to console him over his “divorce”. Kastner and Kohn also had a company together named Gerila. E-mail traffic shows that the payment was requested by Sonja Kohn and it was Daniele Cosulich, the man who ran the day-to-day affairs of HAM, that e-mailed Kastner to confirm the payment had been made.

The network they created also fed into other funds in the network, meaning further fees – it was basically *churning* - something that is illegal under Austrian law. But the creators of the fund knew that by going offshore they would be able to bypass many of the laws and regulations, such as the ban on churning.

In the Primeo family, some of the funds had performance fees, others concentrated on management fees. So they made sure that as much as possible went to the fund where the performance fee could be reached, and the rest went to the sub funds where performance did not matter. It meant that a lot of the work that was done by the Primeo managers was devoted to carving up the fees, and cooking up new ways to get round the regulations. Elaborate strategies that were designed to circumvent regulators, and to point the finger elsewhere when the bubble burst.

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[REDACTED]

[REDACTED] Prior to that (In 1994) there had been regular meetings between Kohn and Zapotocky, Radel-Leszczyński and Hemetsberger who travelled from Europe to New York to meet with Madoff at the BLMIS headquarters and to discuss the setting up of the Medici feeder funds that started with Primeo.

Similar meetings continued two-to-three times a year for the next fifteen years according to the trustee, who said they were always set up by Kohn or her assistant Robert Reuss, Vice President of Eurovaleur and a former employee of Infovaleur, both Kohn companies. Reuss was also employed as in-house counsel for Bank Medici, although according to the trustee he had no formal legal qualifications.

On September 10, 2004, for example Reuss, an Austrian who lives in New York, sent an e-mail with a Eurovaleur signature confirming a meeting between Madoff, Radel-Leszczyński and Hemetsberger to discuss Primeo Fund, and later the other

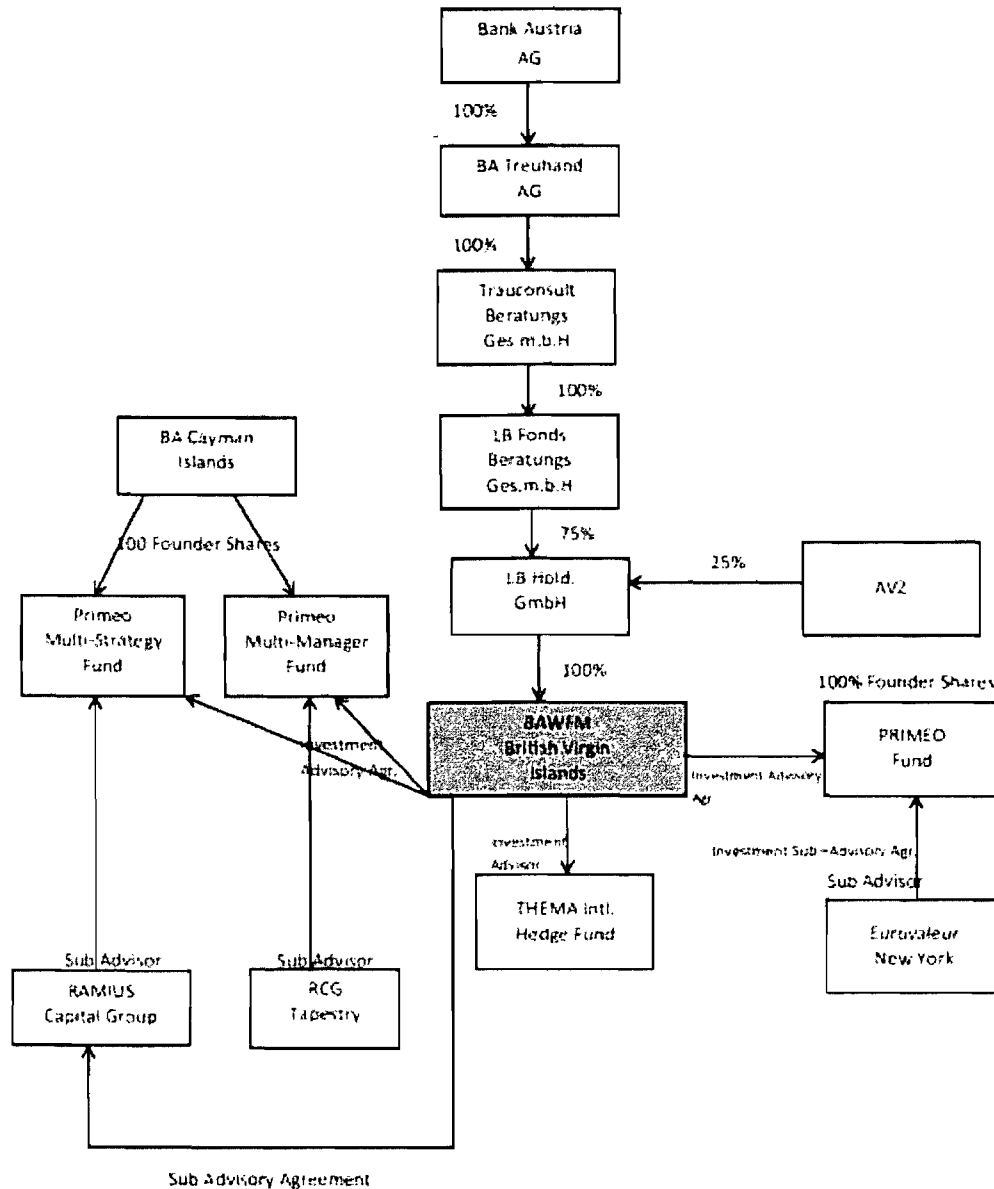
Medici Enterprise Feeder Funds. But when not meeting with Madoff there were also meetings between Kohn, Zapotocky, Kretschmer, Hemetsberger, and Radel-Leszczyński at Bank Austria's New York branch.

What they created in those meetings and others was the master fund, Primeo, a fund that right from the start was not honest with its investors. It was marketed as a diversified "fund of funds" - concealing the fact that all the money was sent to Madoff; and it hid the fact that Madoff would act as both investment manager and de facto custodian – ignoring the Investment Fund Laws of the EU. Once created, misleading Primeo marketing material was distributed to other members of the Medici enterprise to spread. And as the paperwork shows that continued to include Vienna city council's AVZ.

In the TLM files, as mentioned earlier, there was a Bank Austria internal audit for 2003 focused on department 09550 / Bank Austria Worldwide Fund Management Ltd., and in particular on the Cayman Islands Primeo Select (Euro) Fund.

Marked "Confidential", it is an audit from the department dealing with international business and subsidiaries, again by the auditor Christina Markgraf who worked on the 2001 audit, and her colleague Thomas Burda, who spent 20 days to complete the 10-page document. It is a report that when coupled with the 2001 internal audit of BAWFM shows again the level of the Vienna City Council involvement in Primeo.

In the 2001 audit, it includes the detailed diagram overleaf which essentially attempts to identify who is the owner of BAWFM, and to confirm whether it is actually offshore? The question was relevant at this time because it was needed to clarify the tax situation, and in doing so what the diagram also made clear was that Bank Austria was the business owner, through BAWFM, which in turn was held by LB Holding. And LB Holding of course was where all the toxic Länderbank companies and products had ended up, the place where anything messy that managers did not want to contaminate the rest of the bank would be tucked away, and where it added an extra barrier of responsibility from the main business. LB Holding in turn was, according to the 2001 audit, "25% owned by AVZ and 75% owned by Bank Austria".

BAWFM Internal Audit Structure 2001

Or rather as the diagram makes clearer, the bank's 75% was held by LB Fonds Beratungs Ges.m.b.H., which in turn was a 100% subsidiary of Treuconsult Beteiligungs Ges.m.b.H., that in turn was a 100% subsidiary of BA Treuhand, that itself was then – finally – a 100% subsidiary of Bank Austria AG. But why so many

sub companies? Was it to insert several barriers between the bank and any legal action, or was it to make sure fees were creamed off by each company?

The 2001 audit was produced by the bank's own highly-trained auditing staff, and it was unequivocal back in 2001 that there was a direct link between AVZ and Madoff – written in black and white – and that was despite Madoff's insistence on his name being kept secret. Maybe the auditors in 2001, Markgraf and Santer, did not know there was a ban on using Madoff's name, maybe they felt that as it was a confidential internal document it did not apply. But whatever the reason, it shows that Vienna city council was directly involved in setting up and running the fund that as will be argued later was the most important of all the funds that Madoff created. Primeo was the master fund that gave birth to all the others. And Primeo was a product of Madoff, the Bank Austria Conspirators, and the AVZ.

As mentioned earlier, within the city hall, the *Rathaus*, the most powerful financial organisation is the AVZ, the Anteilsverwaltung Zentralsparkasse, which although it is a trust is effectively run by the Mayor and the members of the SPÖ Vienna. The SPÖ Vienna in turn is by far the biggest player in the national party.

With such a high profile, it might be argued it should be setting a good example, so why in the Bank Austria audit is it supporting an offshore company that, according to the bank, is “founded in the Cayman Islands for tax reasons”?

Anyone who reads the paperwork might well ask why a city council, responsible for setting an example for Austrian-based companies to follow, was getting involved in an offshore construction designed to avoid paying taxes? Taxes that were made to pay to run the services the council offered? On the one hand Vienna expects companies to pay taxes and to support the local economy, and yet on the other hand the city itself was getting involved in a deal that meant it avoided those same taxes itself?

[REDACTED]

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[REDACTED]

[REDACTED]

And so the AVZ and its new breed of *champagne socialists* were free to work with Madoff, a man who represented something that was nothing to do with the SPÖ's working class roots.

The extreme secrecy of the way it was managed meant that the AVZ has never been named in any legal suites, or even mentioned in any Madoff stories, because nobody knows about it – apart from the Austrian prosecutor, that is.

In the earlier report from the Project X team, it concluded that the Primeo Fund was the model on which all the other funds were later based. Vienna was roped in to help create that first ever product. And that means that the AVZ were also involved in the founding of the basic structure of the Madoff global feeder funds network – and in the creation of the blueprint that was at the heart of the Bank Austria Conspiracy by supporting it – and not asking questions. Or at least not asking the right questions. Why is a trust that has an enormous responsibility to those whose money it is managing taking such a large part of a tax-dodging offshore construction that is considered so risky by Bank Austria that it puts it five subsidiaries away, and lumps it in with other products too toxic to let near the main bank?

Normally there would or should be a rule on what percentage the trust could own, but as the AVZ is a notoriously secretive organisation, often refusing even to be audited, it is hard to know what their internal rules are. Maybe they would allow it, but normally a trust would be limited in its participation, especially in such a risky off-shore construction. But going offshore was not just a strategy that was needed in order to get more fees from investor's tax free, it was also a perfect way to bypass regulations put in place to protect clients from fraudsters like Madoff.

There was another reason, Primeo was the master fund, the fund that became the blueprint for all those that followed, and while the members of the Bank Austria Conspiracy were testing the water they clearly felt it was best to make it offshore where the laws were less stringent. Later, once they were more confident, they moved some of the clones that were to follow back into the EU sphere. But this first fund was

offshore – at least on paper. In its prospectus, for example, it said it was located at the Bank of Bermuda (Cayman) Limited offices, in the Cayman Islands; the implication being that it was subject to Cayman Islands' law.

Yet in the TLM Files there are over a dozen documents indicating that apart from a paper address there was very little about the fund that was not Austrian, from its staff upwards. The paperwork details meetings and notes from the directors and managers at Primeo Fund that were invariably not held in the Cayman Islands. Staff were paid in Austria. Many even worked in Austria. It was owned ultimately by an Austrian company and at least one court has ruled that it should have been subject to Austrian law.

The bad news for the AVZ continues in the 2003 audit of BAWFM's Primeo Fund where like the 2001 report it warns that nothing has changed with regards to liability, and in the continued absence of an agreement with Madoff, Bank Austria is liable for the entire volume invested with Madoff.

This means that the bank in this construction was always liable for the total volume – an amount that at the end was billions – a sum which the internal audit by the bank's own staff said had to be paid back "100 percent".

It observed that the managers of BAWFM told the auditors they "had attempted to implement the 2001 request that a written contract be agreed, but that despite intensive discussions with their opposite numbers at Madoff's company it had not been possible". The report noted that "Madoff had pointed out he had similar accounts with many other big investors, and these were also all without a written agreement".

The importance of the 2003 document cannot be underestimated. It says, for example, that the BAWFM managed Primeo Select fund had a potential liability risk for Bank Austria for the "entire investment". At that time this represented a total of \$350 million. It also said that there needed to be a check about the fund's results given its performance which was "considerably over the market average for that period".

It goes on: "In addition, with regards to controlling the transactions and checking the positions, BAWFM is almost completely dependent on information provided by the manager." The only additional control being done was that Bank of Bermuda (BoB) Lux claimed, when questioned by the auditors, that it had also asked the firm Thomas Murray Network Management Ltd to do a quarterly due diligence on the manager.

Yet when they were contacted after the Madoff scandal was discovered, Thomas Murray denied that this was the case. In a letter dated January 13, 2012, company secretary Peter Sturdy said: “Our company has never performed any due diligence reviews of managers of either Primeo Select Fund, Primeo Select Fund USD Class, Primeo Select Fund EUR Class, Primeo Multi-Strategy Fund or Primeo Global Fund or any other Primeo Fund. Further, on behalf of Thomas Murray Network Management Ltd, I can state unequivocally that neither Thomas Murray Network Management Ltd nor any other group company has ever carried out any work, analysed or reported on any aspect of Madoff funds for any group of any kind including banks and brokers.”

The Bank Austria 2003 audit also reported that although liability for any losses to investors from a managed account was explicitly ruled out in the prospectus, the risk still remained. In other words, whatever the prospectus said about not having liability, the fact was that liability for the manager remained because of the fact he had been unnamed in the prospectus.

It goes on to stress the same point over liability with regards to the fact that BoB Luxembourg had explicitly ruled out any liability for the manager (Madoff), and that therefore the risk, according to the auditors, remained with BAWFM. That in turn meant the risk lay with Bank Austria. The report urged the bank’s lawyers to once again look at the legal situation over the liability of BAWFM to see what could be done. It also recommended that BAWFM arrange to get access to the quarterly due diligence reports that were supposedly being done by Thomas Murray. Obviously, that never happened, as these alleged due diligence reports were in reality never carried out. Further research showed that actually Thomas Murray had simply created a structure suggesting how reports might be implemented, and it had been the intention to use this on Madoff. But it had never happened.

Interestingly, in the 2003 audit, it seems as if the situation with regards to AVZ’s involvement has been further clouded by inserting an extra company – not between Bank Austria and its 75%, but rather between AVZ and its 25% stake in LB Holding.

This time round in the diagram overleaf showing the structure of BAWFM (and its various sub-advisory agreements over where the fees due should be paid) it shows that the LB Holding minority stake of 25% is now owned by A&B Holding. And as already discussed, in fact A&B Holding was simply the holding company for all of

the various subsidiaries of AVZ. Vienna city council trust was still very much involved – just not as visibly.

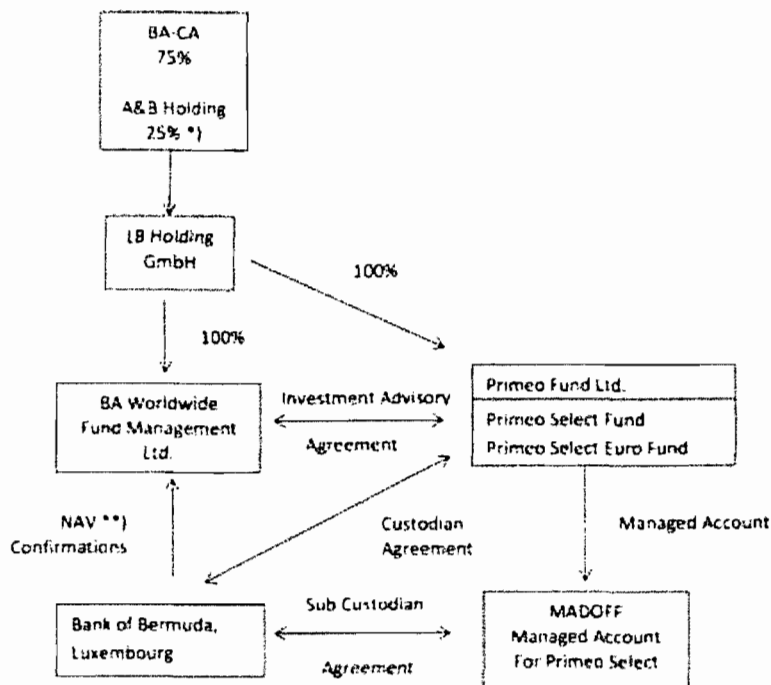
With regards to the depot bank function the auditors noted that it was an unusual construction in that the shares were not held by the depot bank, but rather remained with the manager in a separate account and that this manager who was also the broker-dealer had direct access. It urged that Bank Austria lawyers clarify the legal situation with regards to the liability of BAWFM, at the very least to make it more transparent.

Transparency, however, was something the members of the conspiracy did not want. That might be the reason why the recommendations in the 2003 audit report were also ignored. The audit once again listed as “urgent” and “needs to be settled immediately” the fact that there was “no written contract with Madoff,” and similarly urgent was the missing custodian liability, that was also ignored. It also ignored the urgent recommendation for regular monitoring of what the broker was doing. The person that was responsible for that was, according to the auditors, the leader of the department, who it said was Ursula Fano-Leszczynski (later Radel-Leszczynski). But she was not alone in being told she was making a big mistake. On the front page of the confidential report it listed those to whom it was being sent. A management summary (a condensed version) of the problems went to Kadmoska and the banks now-director, Willibald Cernko, and the summary plus the detailed report went to Kretschmer, Nogrsek and Simon among others. It was the fact that Cernko was sent this, and therefore knew and yet was one of those that did not act, that led to his being named by the Project X team as having questions to answer.

When liquidators moved in to rescue what could be rescued after Madoff’s meltdown, they found that Primeo had not only mutated into other clone funds, but also that the Primeo family itself had multiplied. At the start there was only one Primeo fund that had opened and then was closed – the official reason being that the fund had reached the maximum volume the strategy could support and therefore no new money was needed.

In fact, it merely served to increase the desire to join the club, those inside had nothing but praise for its performance. It meant that Primeo Fund Ltd, which was the parent fund company, and had originally had Primeo Global Fund, went on to develop the Primeo Select Fund, Primeo Select Euro Fund, and the Primeo Executive Fund. When it did so, there was no shortage of takers.

BAWFM Internal Audit Structure 2003



*) Participation via the BA-CA Trust

**) Calculation of Net Asset Value

The Primeo Global Fund though remained the original fund, founded in 1994, with the idea that it would be a fund of hedge funds with different investment advisors and sub funds.

There is speculation that there might not have been any other managers as with later funds, but bank insiders say that on this occasion it was true that it was a fund with several managers, of which Madoff was only one, and he had been introduced by Kohn to show the Bank Austria team what he could do. Kohn, who was already advising Primeo and Zapotocky through Eurovaleur, had seen to it that Madoff was included. And the conspiracy members were so pleased with the results, they later created Primeo Select in early 1996 to invest solely in Madoff.

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As proven, despite all the fancy marketing material, at the end of the day the Primeo funds were simply taking investments and passing them on to Madoff. But the money did not simply go from the investor to Madoff, it needed a bank in between.

Bank Austria Cayman had been in existence since the 90s, and was the perfect partner, but all of the documents have since vanished and the bank licence is not active. It's difficult to prove that Bank Austria Cayman was the main financial hub, but it is the most likely candidate. And in order for it to be a credible partner, as the Primeo business expanded it was necessary to increase its capital using a bond emission.

Here again the AVZ was involved, supporting its Bank Austria investment and supporting Madoff. The AVZ contribution provided the necessary funding and indeed guarantees that allowed Bank Austria to launch Primeo. That was because in order to launch Primeo, Bank Austria needed to create a suitable financial hub – and that meant a bank. But not simply any bank – it needed to be a bank with financial muscle, and one where they also had control.

Bank Medici was not yet a reality, so they invested in Bank Austria Cayman, and to give it the necessary credibility on the market they issued two bonds to raise money. A bond is a financial instrument that is sold to an investor who in turn is paid a *coupon*. A coupon is a periodic interest payment that the bondholder receives. Normally, they are limited to a certain amount of time before they are redeemed, but the two bonds in this case were perpetual bonds – which meant they had no maturity date. One was for €150 million (11) and the other for €250 million (12), in total €400 million. Of the total €127 million of the €400 million was purchased by AVZ – which is more than 30%.

That means that AVZ had an over 30% stake in the Bank Austria Cayman Bonds, and although the AVZ is a secretive trust it is almost certain that it would have been limited by its statute to not buying more than 10% in any one bond. The reason? To limit risk, as the trust has to be responsible with its assets. The 10% rule means that in

And despite the fact that it was an exercise in covering their tracks, they also made sure it generated extra money for themselves from the likes of Primeo Fund's investors who had to pay more in fees. This money according to the trustee went to Kohn, Herald Asset Management Ltd, Bank Medici, BAWFM, and individuals like Ursula Radel-Leszczynski, Stefan Zapotocky and others.

For the conspirators of course it meant a further smokescreen, a stronger argument to say at the end when it came crashing down that it was someone else's fault, and an exercise that at the same time the investors were made to pay for with more fees. And for them the end result was the same - 100% investment in Madoff.

The move to hide Primeo behind the other funds like Alpha Prime was not hidden from the trustee and formed the basis of the charges against former UniCredit boss Alessandro Profumo, who it described as a "good friend" of Kohn.

According to one of Kohn's former Bank Austria colleagues: "She would head off down there to see Profumo with presents but not just the usual *Sachertorte*, one-time I think it was a flatscreen TV or other things that were more valuable like jewellery – rings were popular with her for her favoured clients."

Indeed, Sonja Kohn seems to have had a surprising amount of success in coming up with constructions that UniCredit then supported – for example she had the idea to build a trading system in Italy via UniCredit.

She was provided with a VIP office in Milan in a central location. Her former colleague said: "When you walked inside there was a fantastic entrance hall full of marble that simply was unbelievable. It was then switched off because they realised it was costing €50 million and bringing nothing. Maybe she had got the idea from Madoff but didn't really understand how to bring it into effect herself? He had after all been doing something similar in America. The idea was that everyone in the company would use this trading system and she would get three or four cents from the turnover. The problem was that somehow, technically, what she created didn't fit in with the UniCredit trading system – and after €50 million or so, that was that. They pulled the plug, but it was certainly more than a year that it was in operation."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

Bank Medici insiders confirmed that Kohn would talk a lot about her *close relationship* with Profumo, who would frequently call her directly to chat about business. It was also widely believed by the Bank Medici staff that it was Kohn that had brought UniCredit and Bank Austria together for the discussions that resulted in HVB / Bank Austria being taken over by UniCredit.

The allegation that Profumo was involved in the Madoff fraud was part of the trustee's RICO filing that alleged it was an organised criminal conspiracy and naming both Kohn and Profumo.

But no less important to the master fund creation was Gerhard Randa, the former chairman of Bank Austria and before that chairman of Länderbank that later merged with the 'Z' to create Bank Austria. According to the trustee Randa, who started working in banking in 1967, was instrumental in the creation of Primeo Fund, and it was through him that Kohn was introduced to the other Bank Austria conspirators in the early 1990s.

[REDACTED]

And while Randa may be the most well-known name on the list of those accused specifically dealing with Primeo, of equal influence has to be another Austrian that the trustee claims was involved in the Madoff fraud, the veteran Austrian banker Wilhelm Hemetsberger (55). He met Madoff on several occasions to discuss setting up the feeder fund network, meetings that he was to later describe simply as “get to know you sessions”.

And like Randa himself, quite apart from his Madoff involvement, Hemetsberger was at the heart of the Bank Austria empire. He was a director responsible for international capital market operations from February 2001 to May 2008. He was also a director of BAWFM from 1993 to 2003.

English was no problem for him, between 1994 and 1998 he worked in Citibank International in London and in 1998 was a director of the CA IB Investmentbank AG in Wien. But also between 2002–2008, he was a director at UniCredit CAIB Securities UK Ltd, between 2001 and 2008 Bank Austria’s director for Markets & Investment Banking, and between 2005 and 2008 on the UniCredit Group Executive Committee for global capital markets responsible for Trading, Sales, and the Structuring of the UniCredit Gruppe.

And more recently he was the founder of his own company, Ithuba Capital AG, that is involved in the sale of extremely complex financial structures. The word Ithuba is a Zulu word, and apparently means “Opportunity”. Like Kohn and like Randa, with his role in the bank, and his detailed insider knowledge of fraud and its risks, how could he not have known what was going on with Madoff?

Reuters refers to him as the “veteran Austrian banker”, but in Austrian banking circles he has another name, “Red Willi”. It is a reference to his strong ties to the SPÖ and his student activities where he would be seen waving the communist red flag, the hammer and sickle, at demonstrations. He claimed, however, that it was simply a reference to his red hair, although he admitted having been a member of the

Communist Party in Vöcklabruck in Upper Austria, and later was an activist at the “*Roten Börsenkrach*”, an extreme left-wing student organisation.

The business strategy of Ithuba was dealing with investments that were made a long while ago but that, as Hemetsberger diplomatically put it, “had not developed as it was planned”. He said that together with his team they would analyse the investment strategy that had taken place and then help with restructuring and trying to “make the best out of the situation”.

He said that thanks to the financial crisis there were no shortage of firms looking for his business and right at the start he admitted he’d already signed up 10 or 12 Austrian and German companies. One of those he identified was ÖBB, the Austrian railway company.

It was a swap deal that the ÖBB had done with Deutsche Bank for an estimated €500 million that had not developed as planned. Hemetsberger then turned up as an adviser but insiders at the railway company said they had not wanted or needed him to get involved, but it had been forced on them by the politicians. They had also not wanted to pay the substantial fee that he had demanded for his ‘assistance’.

Above all, though, his socialist roots have given him excellent political connections. He studied with SPÖ former Chancellor Alfred Gusenbauer, who Hemetsberger helped with his good connections in Eastern Europe. Hemetsberger’s connections also allowed him to be named as an advisor to the Austrian Finance Ministry on matters dealing with investment in public institutions and debt management. Because of his in-depth knowledge, it is hard not to agree with the trustee that he must have realized what was happening at the Madoff empire during those meetings to put the feeder fund strategy together.

He is the SPÖ trouble shooter, called in for a large fee when there is a financial problem to sort out. He appears always as an independent advisor, yet ironically, the problems are often caused by the sort of complicated financial products of exactly the type that his company Ithuba had sold in the first place – products that were at the heart of the scandal he was then invariably asked to sort out.

But he made no secret of it, asked once what was the driving force behind his actions he said: “Involvement and reward both need to be visible, but also clearly alongside each other.” Or as the press reporter noted: “One wonders if his former communist colleagues would see it like that.”

Offering advice was something that proved to be lucrative for those involved throughout the life of the Bank Austria Conspiracy. Sonja Kohn set the ball rolling when her company Eurovaleur was hired to give advice to Primeo on capital market questions and analysis. But there can have been no performance behind it. It was all empty words. The claim against her is that the payments were actually a way of paying her a kickback for introducing Bank Austria to Madoff.

BAWFM received *at least* \$55 million in management and performance fees between 1994 and 2007 for its 'work', and of that Eurovaleur in New York received 20% for serving as a sub-adviser to BAWFM, payments that were authorised by Bank Austria.

When Madoff was exposed the losses for Primeo Fund were \$1,210,000,000 and Primeo Fund (Class B) (\$370,483,000), a total of around \$1.6 billion. And it had been far higher before redemptions, but if this figure is taken as a basis for the management and performance fees – it allows a ball park figure of \$400 million of commissions from these funds alone, based on about \$850 million a year between 1994 and 2007.

If BAWFM had €55 million, what happened to the other \$345 million? One thing is certain, as long as the business was running, and it did run between 1994 and 2007, the commissions were paid out. But where?

Like Hemetsberger, Sonja Kohn knew of the risks of bad advice, it is littered throughout the marketing material she created, so it's hard to see how she could have agreed to it if she was not up to anything deliberately dishonest. There was a fax from 1999 from Eurovaleur that warned investors of the many pitfalls in the market, for example through "the abuse of due diligence". In some companies, the fax said, it was "treated as a one-time affair, carried out prior to actual manager selection and then either taken for granted or neglected totally".

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Primeo Fund fed hundreds of millions of dollars into BLMIS at first directly, then when they realised this could cause them problems, it was switched to making payments indirectly through other Medici Enterprise Feeder Funds like the Herald Fund, Alpha Prime Fund, and Thema International - further oiling the churning machine but doing nothing to reduce the risk.

[REDACTED]

Primeo Fund's prospectus promised diversification, yet those accused knew that was exactly what it didn't offer, either in its strategy or its manager or its custodian, and it never ever mentioned Madoff or BLMIS. Why? They were after all promising transparency.

The Primeo prospectus was in the TLM Files [REDACTED]

[REDACTED]

It was commissioned by Kadrnoska and Kretschmer. Kretschmer provided the content, he was the mastermind, and Kadrnoska made sure it was implemented through his membership of the board. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

But regardless of the ownership division of BAWFM and LB Holding between Bank Austria and AVZ, what is clear is that the fund doesn't belong to the investors, which in Austria is illegal. The law says that if you buy into a fund then you should own the securities, in other words each investor gets a share of the securities based on what percentage of the fund's capital they have provided. In short, if an investor has placed €1 million into the fund and the fund's total was €100 million, the investor would be entitled to 1% of the securities. But in the construction listed in the Primeo prospectus the investor is not the owner of the securities. The company Primeo, which means the holders of the Primeo founder shares (ie the bank) are the owners of the securities, something that was only possible by going offshore.

The bottom line is that if Primeo was to declare Chapter 7 (bankruptcy) – the bank gets its money first, so it can lump all sorts of costs onto the final bill before handing what is left over to 'creditors'. In the event of the fund closing down - the assets, which would mainly mean shares and stocks, belonged to the company, and that meant Bank Austria, which would have first claim on any assets. That was important. Why? Later on it says that should any legal action result against the fund, these assets can be used to pay such costs before what is left can be divided up among investors. To the savvy investor, it is an indication that something is wrong when a construction is set up that allows managers of a fund to grab the shares at the end.

Another key point is the commissions. Without going into details, if you add it all up, after 10 years you are looking at close to 50% commissions. Again, a savvy investor would wonder at what sort of investment manager was capable of running a fund that could generate 50% commissions over 10 years and on top of that come up with a profit for the investors?

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That meant that one strategy should not always be the best strategy if thinking long-term, especially not if it was a strategy that was so much in use in so many other clone funds. It's inconceivable that so many people could be expected to make a profit all the time they were with Madoff. Yet that is exactly what the Bank Austria Conspiracy claimed was happening. By choosing only one manager with only one strategy they could only have been saying that he was either a magician or he was doing something illegal. Whether that was front running or a pyramid scheme may not have been immediately clear, but something illegal for sure.

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him Fischer. Can professionals at this level claim to have not known? Was this a deliberate attempt to pull the wool over people's eyes? Even if they did not know exactly what was wrong, they must have known something was wrong because all the rules and even plain common sense says the system should not have been allowed to exist.

[REDACTED]

So why did Kretschmer, Zapotocky, Fischer and the other alleged members of the conspiracy allow it? They were all on the board. If they really were not guilty of fraud, then serious questions need to be asked about what they were doing in their roles in the first place? Their actions damaged the bank's reputation – put jobs at risk – cost the bank money – cost customers their money. [REDACTED]

[REDACTED]

[REDACTED]

There is then a section on the payment of the investment adviser fees. It says that the adviser gets from all securities and options and futures and other things that make up the NAV of the fund a 20% performance fee. So this is a confirmation that the fund pays performance fees. This kicked in if there was an increase in 10% of the NAV on some but not all members of the Primeo family. But as has already been pointed out, it was always made sure that when the Madoff payments turned up these

were properly allocated to make sure the performance fee was earned in the right place.

The payments and fees were decided on ultimately by the board according to the prospectus listing, which among other things gave them the authority to award themselves payments, and then it lists the members of the board and leading employees including Kretschmer's enforcer Alfred Simon who was president. The other board members were Karl Kaniak, James O'Neill, Johannes Spalek and Nigel Fielding.

People who were also connected with BAWFM and specifically with the 2001 and 2003 audits, like O'Neill who was named in the 2001 audit as a director of BAWFM, or Kretschmer and Simon who were named as having been sent the 2003 audit warning of major problems with Primeo.

[REDACTED]

The Englishman O'Neill was also managing director of the Bank Austria Cayman and also on the board of directors together with Hannes Saleta and Nicola A Corsetti. It was technically no conflict of interest, as both were bank Austria subsidiaries. O'Neill was a personal friend of Gernot Heschl, head of the department for international corporates and a member of the supervisory board of Pioneer. They did their apprenticeship together in Bank Austria.

Nigel Fielding, who was also British, was according to the prospectus still working at HSBC securities - a classic conflict of interest if true as it shouldn't be possible to work as a director on the board at Primeo Global Fund services at the same time as at HSBC. It meant being responsible as the custodian and at the same time being in the fund where he was checking the assets were there, it should not happen.

* * *

For a professional investor, there are things in this prospectus that should have given them an indication that all was not well – whether it was the strong clause limiting

liability or the sloppy use of language or the fact that it was set up as a company and not a traditional fund.

With the knowledge of the real structure behind the fund one could go further - it was a product that no serious investor would ever have touched. Yet the reality was many may not have read it at all, as they were really only lured by the tax advantages. With an offshore investment there is no tax. There are only the fees, because in the Cayman Islands there are no taxes deducted. And while dividends are not tax-free, fees are tax-free. At the end of the day the bank's motivation is not really that complicated for those that want to see it.

The concealed indirect investment in BLMIS allowed Primeo Fund to appear to comply with its promises as made in its prospectus, while in fact it was still 100% invested with BLMIS.

Kohn provided Bank Austria with direct access to BLMIS, with Randa, Kretschmer, Zapotocky, and Nograsek directing and supervising the creation of Bank Austria's direct BLMIS account, which meant making sure it complied with, or in the case if Primeo, went round the rules and regulations. That included setting up contracts assigning who was the broker-dealer and who was the custodian, making sure that the assignment of responsibilities addressed the problem of the separation principle and that all the other paperwork was in place. The trustee also added another name at this point, saying Kadrnoska had also been involved in supervising the creation of Bank Austria's BLMIS account.

[REDACTED]

In order to get a banking license she needed 50 million Schillings capital (€3,63 million), and qualified staff to run it. By the time that application was processed she had the 50 million – but from where and from whom?

According to the trustee, she had the money from Madoff, but according to her former Bank Austria colleague she would have not needed to borrow the money: “She could easily have had the 50 million Schillings by then from the commissions she was earning from her various products.

“The funds she created alone were bringing in a lot of money but she always found ways to boost that, sometimes the performance sheets were reduced, sales fees were divided again in a way that was to her benefit. That was all money she got, I guess it was about 15 to 20 million Schillings a year, which was a lot of money in those days. What happened in America and whether or not she was given a loan by Madoff I can’t say, but what happened over here was more than enough to come up with 50 million.”

At the end of the day the data was made up – so there was a lot of potential for it to be manipulated.

After Bank Medici came into being, Kohn immediately began using it for marketing and distributing Primeo Fund, expanding upon what Eurovaleur started in New York in 1991. With Bank Austria behind it, and its aristocratic name, it turned into a gold mine for Kohn.

[REDACTED]

In fact, Bank Medici and Bank Austria were so intertwined that they had a virtual “revolving door” of officers, directors and employees; jobs that were handed out even when some of those appointed did not have the experience or qualifications for the role. As one would leave, another would take their place, why else would people like Kohn, Scheithauer, Kretschmer, Nogrsek, Duregger, and Guty (of UniCredit) all have jobs within Bank Austria and the Medici enterprise?

[REDACTED]

Bank Medici was only interested in investing in salesman, and was only interested in investing zero in administration and management – as exhibited for example by the amateur performance sheets and her refusal to get software to do the job. With its headquarters in Vienna it was convenient as she was close to the other conspirators, but Bank Medici had global ambitions, and it increasingly focused on marketing and distributing the Madoff-linked investment vehicles through other banks and asset managers in Europe and beyond – and Kohn focused on being the gatekeeper to her “good friend” Bernie.

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[REDACTED]

Who would have suspected that Bank Medici, with its royal image and its ties with one of Europe's largest banks, of being the agent for the world's largest pyramid scheme financial fraud?

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Following news of the fraud on January 2, 2009, the Austrian government appointed a supervisor to run Medici bank - Gerhard Altenberger - who tried and failed to find buyers who might be interested in its banking license. Medici's income source had vanished when Madoff was exposed but Sonja Kohn's lawyer still argued it could be a good buy: "The main asset is a banking license in an affluent European Union member state," her lawyer Andreas Theiss said, adding: "To be able to enter that market quickly, and simply, is an asset."

In the end, though, Austria revoked Bank Medici's banking license even as Sonja Kohn continued to deny that she had been anything but another of Madoff's trusting victims. After the exposure Medici Bank's lawyer Theiss, who was also Sonja Kohn's lawyer, even expressed surprise at being asked if anyone had notified Bank Medici that they planned to bring proceedings against them. "There is no legal basis for them to do so," he replied.

Nowadays, Bank Medici has been renamed as 20:20 Medici, and is located at *Hegelgasse* in Vienna. A trip to the address shows no sign of the office, but there is one name on one of the flats at the address, Wolf-Theiss, the name of her and her bank's lawyer.

But while Bank Medici was the crown jewel in Sonja Kohn's empire, it was not alone. Another was Herald Asset Management Ltd (HAM), which was at the heart of the funding mechanism for the Medici network.

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[REDACTED] Peter Scheithauer, a former Bank Austria employee, and one of the creators of Primeo Fund, was a director of Herald (Lux), CEO of Bank Medici and one of those who was in a position to be well aware that Bank Medici did absolutely nothing for what it was paid by HAM. In fact,

as he struggled to explain exactly what the money was for, Scheithauer eventually characterized all of HAM's payments to Bank Medici as "a gift" from their benefactor, from Sonja Kohn.

Scheithauer had remained a close contact of Kohn and was brought in as the end seemed inevitable by Kohn to replace Frey as Head of Bank Medici. Intimately involved with the creation and management of Primeo Fund he understood the structure of the Bank Austria Conspiracy better than most. She made it clear that Bank Medici's involvement in the Herald Fund and Herald (Lux) was to continue and also told him that she and her husband planned to move to Switzerland. Scheithauer was happy to accept, and cashed in his pay check from HAM, and his "bonus" from Kohn's Infovaleur in New York in order to focus on making Bank Medici appear legitimate. On August 25, 2008, weeks before he joined Bank Medici, he got his reward when Infovaleur made the payment as agreed, and he started his damage limitation exercise. One of the first people he met after the collapse was Madoff investor Elena Shpe, who on December 23, 2008, met Scheithauer in Vienna to discuss her lost investments with Bank Medici. During the meeting, Scheithauer told her he too had been *surprised* that the bank had made investments with BLMIS, and that she should not engage in "blame games" as everyone else had been a victim too.

The TLM files reveal a lot about the workings of Primeo, including one document where he wrote a four-page report to the member of the board of Bank Austria Helmut Bernkopf saying: "I don't know if you realise it, but the management of our bank are in Primeo? With a 100% ownership through a holding (LB Holding) and 100% of all the voting rights it means that we own it and are therefore responsible. And because it belongs to us, it is no fund." In the TLM files there was a handwritten signature and a handwritten remark that Mr Bernkopf was shown the original documents and prospectuses and the internal audits.

Also included in the TLM files are board meeting reports that were supposedly all destroyed after the bank sent Heinz Meidlinger, a close friend of Kretschmer and Hemetsberger to the Cayman Islands in 2009 – his mission – to clean up everything. He was in the treasury department for asset liability management. When he returned even the carpet, blinds on the windows, furniture, everything had been cleaned away. After this work he was retired with a substantial golden handshake, according to a bank insider.

The reports include the Board of Directors of Primeo fund meeting held in Luxembourg in December 2002. Alfred Simon was chairman and signed the minutes, even though he was to later say he was only a director.

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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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HAM was owned by Kohn's husband Erwin, and it was the investment manager for the Herald Fund S.P.C., that like HAM was based in the Cayman Islands. Money HAM-controlled funds raised from investors was fed directly to Madoff. But before it

got to them, the money had often gone through other funds in order to generate more commissions.

[REDACTED]

[REDACTED]

The Herald family was an incredibly complicated network that was designed to make it seem as if all of the funds offered different advantages. But that was only marketing, to make sure Madoff funds appealed to as broad a spectrum as possible. In reality, every fund was a clone of the next because all they did was take the money and hand it to Madoff, often churning it around in the network to squeeze out as much in fees as possible.

Competitors could not match the Herald performance. Most had fallen an average of 17% as the global credit crisis bit into returns. In fact, on paper at least, none of Bank Medici's funds ever had a single negative quarter. Even as late as the start of 2008 the Herald family was still expanding with the creation of the Herald (Lux) US Absolute Return that was sold as being "solid as a rock" because of its UCITS III accreditation – yet which was merely another 100% feeder fund into Madoff.

It was a powerful argument for investors that Sonja Kohn used to good effect, although after December 2008 she was keen to show how Herald had been a poor performer: "The Herald Funds actually had very unspectacular returns. I mean look,

half the time the funds were bringing in figures that were substantially worse than the stock exchange.”

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Sonja Kohn said: “My family and I were the second largest investor in one of the Herald Funds, in March 2008, we had even doubled the investment. Sadly.”

She did not say how much that alleged own investment was, but in his RICO complaint against Kohn the trustee said that Kohn told a similar story about losing her own money to Madoff investor Elena Shpe, where she had “denied any knowledge of Bank Medici’s exposure to BLMIS” and had “lied about her personal financial exposure to BLMIS, claiming that she also lost money with BLMIS”.

The complaint added: “Although Kohn and her co-conspirators fed billions of dollars of other people’s money into BLMIS, neither Kohn nor any member of her family ever established a direct account with BLMIS.”

Once her work on remoulding Bank Austria had been done with her fellow conspirators, she threw herself into creating her own parallel rival network, and ever since the first Herald product came onto the market in 1996, she remained at the heart of that operation. With her knowledge of the Bank Austria network, and then her own Herald network, mixed with her background of operating in the US, she would have been well placed to have seen exactly what Madoff was up to. She was not only the woman that was able to get behind what the Irish lawyer for victims described as a “wall of fog” over the operation in Austria. She was also the woman who had built the fog machine.

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A classic example was the avoidance of the most basic point of due diligence, namely to check that Madoff was even allowed to do what they were paying him for.

Madoff was not licensed as an investment advisor, yet his co-conspirators not only deliberately avoided checking on this fact, something that was a basic requirement for their role; they also actively helped Madoff to hide that fact from regulators, sophisticated investors, and other hedge funds that could have discovered his fraud.

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As the Bank Austria insider that worked with Kohn said, she was behind much of the marketing material. In the early years it was hand-written by her and handed over to the bank to write up. Later, she delivered finished prospectuses. These looked professional, some were even leather bound with brass bindings, but as their contents showed, they were still often worth little more than wallpaper.

At various times when explaining the split strike conversion it referenced the strategy as being tied to the Standard & Poor's (S&P) 100. Yet at other times it was the Standard & Poor's 500. As with the same mistake over the S&P 100 and 500 that was made in Bank Austria's internal audit mentioned earlier, the writer of the Herald promotional material didn't seem to know or care which was correct, yet obviously it makes a difference. The important and significant thing about the mistake is that a proper professional, when they create a document like this, needs to make sure everything is correct – and the fact that the prospectus did not seem to know which basket of shares the fund was even investing in should have been very worrying for any potential investor. But the Bank Austria Conspiracy team knew that in reality neither the S&P 100 nor the S&P 500 was invested. It was therefore irrelevant what they wrote.

As the US trustee legal case against HAM points out, Sonja Kohn “knew, or should have known”, that Madoff's business was dependent on fraud: “[REDACTED]

[REDACTED]

[REDACTED]

How else can she and her co-conspirators explain ignoring the articles in America that spelled it out in black and white, like the May 27, 2001 article in *Barron's* entitled *Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks investors to keep mum*, and also an earlier May, 2001 article in *MARHedge* entitled *Madoff Tops Charts; Sceptics Ask How* – not to mention the German language report in the Austrian *Fond* magazine in Kohn's homeland.

HAM and Kohn and the rest knew this, and they knew other things too, like the fact BLMIS functioned as both investment manager and custodian. They knew because they set it up like that. The only bit of the article they seem to have read well was where Madoff himself said: "The results are the results and the performance is the performance". And that was true, BLMIS results were so good they were almost too good to be true. For the Herald Fund annual rates of return on its investments with BLMIS ranged from approximately 10% to 13% from 2005 through to 2007. That was a message that spoke for itself.

Kohn "knew, or should have known" that the Herald Fund received far higher annual rates of return on its investments with BLMIS than any rival funds using the same strategy. She also "knew, or should have known" that Madoff's results failed completely to follow the S&P benchmark. And she also "knew, or should have known" that the interest rates BLMIS would have paid to commercial lenders if he had borrowed the money instead of taking it from her network would have been much lower.

This was especially significant as it was the main argument as to why Madoff could not have been front running. In order to borrow that sort of money the banks would have carried out checks that revealed he was running a pyramid scheme. So he had to use feeder funds, a far more expensive way to gain capital.

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[REDACTED] Sonja Kohn asked how people could have expected her to know what was happening on the other side of the world? The answer to that was that, actually, for her at least it was really very easy.

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It is not the purpose of this book to look at whether Aksia had ever passed its reports on to authorities, but in a letter to staff on the same day Madoff was arrested Aksia CEO Jim Vos said: “Aksia published extensive reports on several of the “feeder funds” which allocated their capital to Madoff securities. Our decision to not recommend these feeders was never based on the existence or discovery of a smoking gun; however, there were a host of red flags, which taken together made us concerned about the safety of client assets should they invest in these feeders. That meant that every time they were asked by clients they “waved them away from the Madoff feeder funds”.

Another warning sign should have been the fact that Madoff also waived fees that he would normally have been entitled to even though it made no sense.

[REDACTED]

Yet Sonja Kohn was happy to accept that, and also in turn the fact that Herald Fund, whose only role was to funnel money to BLMIS and had no high tech back office or indeed any secret formulas, received administrative fees and a share of the profits for nothing. They pocketed the cash that would normally have gone to BLMIS, and no eyebrows were raised even though the “knew, or should have known” that something was badly wrong.

[REDACTED]

[REDACTED]

By waiving the management fee of course it provided another opportunity for those he wanted to feed money to him to get rich by pocketing the fee themselves. The idea of passing it on to the client occurred to no one.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ivy asset management, Credit Suisse, Rogerscasey and Renaissance had firmly blacklisted him by 2004. When asked why they had not warned others, a Renaissance executive, Nat Simmons, said that the information which they had based their decisions on was also readily available to others - including the regulators. He said his team had access to exactly the same information as everybody else, it was all a matter of public record and didn't need a Ph.D. in maths to understand it.

In short, these people knew because they were professionals, and had the skills to see that the split strike strategy could not have worked. They were, in fact, people like Sonja Kohn, a licensed trader, and a person that "knew, or should have known" that there were real arguments against investing with Madoff.

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She was a victim too, or so she claimed. Yet unlike other Madoff victims she still seemed to be able to move money around after his fraud was exposed. [REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

Frozen for others, but not for Kohn, who even after Madoff's confession managed to use her network of companies including HAM, Tecno Italy, Infovaleur, Erko, and Eurovaleur to direct transfers of what she now must have known was stolen money to her lawyers, Hassans, in Gibraltar, and family members like her husband Erwin, her mother Netty Blau, her daughter's Nicole Herzog and Rina Hartstein and son-in-law Moishe Hartstein, her son Robert Kohn, Herald Fund director Paul de Sury, Eurovaleur functionary Yakov Lantzitsky and Palladium, an SEC registered broker dealer that is at the same address as her company Eurovaleur in New York and owned by her son-in-law Moishe Hartenstein.

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[REDACTED]

By this time Stefan Zapotocky and his sidekick Peter Fischer were both no longer in the bank hierarchy. They had their hands busy with Anaxo Financial Services GmbH, with Fischer as managing director and Zapotocky head of the Anaxo supervisory board.

Peter Fischer had been a constant presence in the treasury business and was another of the people named as a “suspect for criminal proceedings” by BakerHostetler. At the end of his time at Bank Austria he was a director, the Group Treasurer, and as a result also the boss of the controversial treasury manager Fritz Galavics and Friedrich Hondl.

Fischer is reportedly well connected to Franz Hochstrasser, deputy CEO at Erste Bank, why else would Hochstrasser allegedly make the 6th floor of the bank’s posh *Graben* offices available to Fischer for his private birthday party celebration?

The friendship between the two can be traced back at least to the time Fischer left the bank following the scandal in Russia over the rouble crisis in 1998. Fischer took the responsibility for the scandal, even though he was not really to blame, and Randa made sure it was worth his while.

By well rewarded, several different sources confirmed that Fischer himself boasted he was given 100 million Schillings (€7.27 million) as a golden handshake when he left. Could that be a ‘reward’ for taking the blame. Whatever the truth, it is clear that it left him well connected with key people in Austrian banking circles, and that none of them seemed to want to avoid him, or bore him any ill-will over his supposed mistake.

He was reportedly invited last year by Bank Austria boss Willibald Cernko to his birthday party, 14 years later yet he is still on the guest list. But then again, Fischer is a man who knows a lot.

He moved from the rouble crisis to the centre of another of Austria’s most spectacular and longest lasting scandals over stolen money involving the former East German dictatorship the *Deutsche Demokratische Republik* (DDR), the Communist East Germany that existed before the Berlin Wall collapsed.

The roots of that crisis had started in the early 1990s when Länderbank had been involved in questionable activities with a former DDR business manager, although his role was only in the spotlight much later. And Länderbank, which was by then Bank Austria, ended up footing the bill when in April this year (2013) it was ordered to pay Germany €128 million with 5% interest going back to 1994 – a total of €254 million.

The court heard that the money had belonged to East Germany and had been removed by a Viennese businesswoman and member of the Communist Party, Rudolfine Steindling, more than 20 years ago.

Like the socialist members of Club 45, despite her own socialist roots she was known to have a passion for *Chanel* suits and expensive champagne that she did not feel in any way conflicted with her membership of the Communist Party. She counted as her close personal friends the likes of former Chancellor Franz Vranitzky, the man who rescued Länderbank and then became chancellor as a result, and Hannes Androsch, one of the founders of club 45 that was at the heart of the Lucona scandal. She was also friends with former Bank Austria boss Rene Alfons Haiden and perhaps most importantly of all to his successor, Gerhard Randa.

Known in Austria by her nickname “Red Fini”, she was officially the trustee of the Austrian Communist Party and managing director of the East Berlin trading companies Novum and Transcarbon. When East Germany joined with the West she managed to move 3.5 billion Schillings (€255 million) to bank accounts in Vienna and Zurich to prevent the German officials getting hold of it.

She did that with the help of leading officers at Länderbank and despite a 20 year legal battle the Germans only ever managed to recover half – €127 million was declared missing at the time and never recovered.

Even without his friendship with Red Fini the former Bank Austria boss Gerhard Randa in particular would be able to shed light on the matter, but he is saying nothing. But then again what could he say that would not incriminate him? He was the head of Länderbank until it joined with the ‘Z’ in October 1991 to create Bank Austria. From 1982 Länderbank was the house bank of both Novum and Transcarbon. Randa has been publicly accused in Austrian media of playing a crucial role in the laundering of the money, but no charges have ever been made. Länderbank had even helped move things along by giving a lucrative advisory contract to Gerhard Beil, the former DDR foreign trade Minister and head of the DDR’s foreign spy network. It was never cleared up exactly what he did as an adviser for his fee.

On May 22, 1991, Red Fini authorised Länderbank to make 18 transfers from her Novum and Transcarbon bank accounts to Länderbank’s Zürich-based subsidiary BFZ. The money was paid into a series of accounts that she had only recently opened. That was in total 1.76 billion Schillings (€127 million). But the money didn’t stay there very long. By February 4, 1992, it had been withdrawn in cash and taken back to Vienna in suitcases where it was paid back into anonymous savings accounts.

Swiss prosecutors alleged that Peter Fischer was the man who travelled backwards and forwards between Vienna and Zürich a total of 51 times, each time carrying

suitcases stuffed with between 20 million Schillings (€1.45million) and 60 million Schillings (€4.36 million), money that he then paid in at Länderbank as an anonymous securities account (*Effektenkassageschäft* or EKG). This is a deposit account banned in 1996 over fears it could be used for money laundering. It was normally used to buy or sell securities and is not a Giro account, so the money could be paid in anonymously, but at every payment Fischer had to sign and Zapotocky as his superior had to counter-sign.

The bank could have washed its hands of this obviously illegal matter by turning the two in. If the documents had been produced, legal experts said it would have been a powerful argument that the bank itself was also a victim, and was therefore not guilty, but the bank did not produce them. It paid the damages knowing the circumstances. An expert could have checked the signatures were genuine, and in any case Fischer had paid the money in using the same code word that Steindling had on her private EKG's. In short, in those days of AAA+ banking secrecy, whoever had the card and the keyword had the funds

Fischer and the Länderbank management kept 10% of the total, and then handed the cards with the remainder back to Steindling. No messy inter account transfers, nothing traceable, just a quiet meeting in a Viennese café and the books were handed over – the codes she already had. And the business was concluded.

Or at least it was for those who cashed in.

Bank Austria was sued over its assistance to Steindling in removing the money. Even on January 14, 1992 the German officials had tried to stop the transfers, but Länderbank had continued until February 4 in paying out the money. But then again it would have been hard for them to refuse her – after all - she knew too much. Peter Fischer was an authorised signatory on the Länderbank Novum accounts. Fischer together with Bank Austria's Swiss subsidiary boss were put under suspicion of money laundering, yet charges were suddenly put on hold in October 1995, and never relaunched.

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[REDACTED] Bruck Invest was owned by Karl Bruck, who once worked alongside Fischer in Länderbank. Bruck had been a dealer for options and futures at Bank Austria. What he set up was something similar to Madoff in that it was an options strategy.

As an aside, Karl Bruck was also linked in with the Madoff probe after he was selected by Randa to act for Bank Medici in January 2000 to coach Kohn on how to acquire a banking license. Bruck had connections with the Austrian Financial Market Authority (FMA) that were vital for the application to go ahead successfully. And for the next three years, Bruck attended FMA hearings alongside Kohn and assisted her through the auditing process.

He may have had success with the FMA, but when he moved to run a strategy similar to Madoff he found it didn't work, not really surprising as it didn't work for anyone else either, and of course Madoff was only pretending to run it. Bruck's basic strategy was to sell "put" options which given that the basic underlying of the market was up, was a safe bet. But then in 2008, the markets plunged, and companies like his that had staked on a rise lost a lot of money.

Later Hans Haumer joined Anaxo in 2007, after he sold his Liechtenstein-based insurance company CapitalLeben to Swiss Life in 2007. His speciality was helping people to secure their hard-earned funds by offering opportunities where tax was as reduced as possible. At Anaxo, he continued to sell the same products, including the wrapper contracts and indeed in the TLM files for 2008 there is a sample Swiss Life contract that effectively explains how to avoid taxes on undeclared income, that after 10 years can be withdrawn legally.

The paperwork shows that Anaxo also continued to benefit from its directors links to their former employer, Bank Austria. In 2005, the Austrian-Canadian businessman Frank Stronach had given Magna Entertainment Bonds to Bank Austria as security on a loan; these were sold off by the bank as the loan reduced.

The documents show that Bank Austria was actually quite capable of doing the sales and had already done so, so why did some of them suddenly end up being sold on by Peter Fischer at Anaxo?

The Stronach deal had started with a substantial loan – more than a hundred million euros – and the underlying security for the loan was in Magna entertainment bonds.

And from time to time the bank, in accordance with the client's wishes, sold the bonds. The lower the credits the lower the volume of bonds held. But the underlying was roughly one-to-one. The bank sold a lot of bonds via its bond trading department, and earned the normal selling fees through the deals; a regular part of the bank's daily business.

Later, when TLM wanted to carry on with the sale orders, he was told by Hondl that they were putting the rest through Peter Fischer and Anaxo, who were organising the broker deal via HSBC. TLM wrote: "I cannot understand why a private asset management company with three people involved has more knowledge in selling bonds than the whole of the Bank Austria group."

What could the reason be? The fact is that the company that does the deal gets the fee. There was no information in the paperwork about what fees were paid from the deal – but what might be the reason to give work from a big company like Bank Austria to a small company like Anaxo? Can the reason be commissions? It cannot be proved, but the fact is that with every sale order there is a commission. If true this was a totally unnecessary outsourcing, and a resultant loss of fees as Bank Austria could and in the past at least had done the work itself.

Anaxo billed itself as an investment advisor, but it did not offer the sort of advice that was offered by TLM, instead it was focused on the sort of investment advice motivated by the substantial fees involved, and where the risk was all taken by the client.

That was perfectly illustrated in the case of Hartberg, a local community in Styria. Anaxo was not interested in small investors, they wanted the big money. The big-money was with insurance companies, banks and stock listed companies. But these were also savvy investors, people who knew how to do proper due diligence. Another possibility though was local communities, places where the councillors that controlled the funds didn't understand the financial world, and who could be persuaded to invest perhaps without really understanding the risks.

Hartberg was a perfect client. The community was unexpectedly very wealthy. It had sold the local savings and loans bank, which was local council owned, and had pocketed €63 million, and agreed to put aside €40 million that would be used to invest and were looking at what to do with it. Sven E. Rischko was at the time on the board of IMB Asset Management Company, one of those in Hartberg advising the council on where to invest, and he invited Fischer from Anaxo to make a presentation.

With its backing of former Bank Austria managers, Anaxo seemed perfectly placed to give good advice on just that. The local council had lost €2.5 million investing in real estate securities, including €1 million that was lost through the controversial Meinel European Land (MEL) shares, and it wanted to avoid making the same mistakes again.

As a result of the losses there was a meeting between the mayor Karl Pack from the Conservative People's Party and the local Green party councillor Heinz Damm. The result was that the mayor promised that he would no longer use the money in risky financial speculations, only to invest a short while later in Fischer's friend at Bruck Invest on the advice of Anaxo.

What Anaxo did was to recommend that the community invest the €2.5 million in a low risk investment through the Vienna-based Bruck-Invest Verwaltungs- & Beteiligungs AG, that was actually a Virgin Islands offshore construction, and which is now insolvent.

By 2008, it was clear that the investment was not doing well, but Hartberg said they were advised to leave the money there by Anaxo. A few days later, the fund collapsed with what the legal case on the council's behalf described as a "total loss".

Hartberg may simply have been one of the many local councils that for political reasons decided not to demand its money back based on wrong information, were it not for the fact that they then also found that Otto Randl was sitting on the advisory board of Bruck Invest. Fischer's plan of sending him to be on the board in his place meant it was Otto that ended up in the firing line.

Hartberg is in the province of Styria, where the regional government auditor Johannes Andrieu said he would have liked to have been able to look at the books. He also pointed out that it was not necessarily illegal for local councils to put public money in risky financial products including hedge funds or swap deals. That was in contrast to the fact that local councils were forced to get special permission if they wanted, for example, to sell property or take out loans.

Hartberg said it was told it was a low risk strategy, even though they said Anaxo must have been in no doubt that the money was actually being used to support questionable financial enterprises that were certainly not low risk. The council was left with a debate over whether or not the mayor should resign over his questionable financial decisions, but at least the community was not left bankrupt, unlike for example the community of Trieben on Liezen who ended up with a €30 million loss

on investments that were actually more than the SPÖ controlled town had in income, and which had to declare itself bankrupt.

Of the two however, Hartberg is extremely relevant to the Madoff case because Hartberg is also taking legal action against Anaxo (and Erste Bank) over another hedge fund that is barely mentioned in the huge debate over the Madoff scandal.

Alpha Prime.

It was a fund that traded on being exclusive, an insider tip, the fund that was billed as being as good as gold, the fund which was the perfect cash alternative, but which paid a much better interest rate than a bank account. Alpha Prime, however, has attracted almost no interest in the media, could that be because of its high profile board?

When it was set up the board of directors were Sonja Kohn, Stefan Zapotocky and Ursula Radel-Leszczynski together with Nigel Fielding from Bank of Bermuda. Insiders said there had been a row between Radel-Leszczynski and Kohn, and as a result both resigned from the board, making way for Fischer and Zielinski to step in.

Hartberg's lawyer Ulrich Salburg through the firm AdvoFin demanded €457,000 from the Alpha Prime Fund and from Stefan Zapotocky and Peter Fischer, as well as the lawyer Christian Hausmaninger. They case alleges that as well as breaching the investment fund rules, the accused were also guilty of fraud.

Zapotocky declined to comment on the case against Alpha Prime saying: "It is all really too complicated to explain". He said that he was relying on the lawyer Hausmaninger to deal with explanations.

Hausmaninger has been involved in prominent court cases involving financial fraud before, but usually acting for those involved: Immofinanz, Meisl, Panamanian trusts, Telekom Austria. And of course the Manhattan Investment Fund.

He pointed out that the legal case from the lawyer Salburg was a "poor attempt by a legal colleague" to use a civil court case to improve a hopeless situation. He added: "The prosecutors already investigated this case and decided that there was no case to answer." That investigation (13) was carried out by the prosecutor Michael Radasztics, the Madoff prosecutor.

Alpha Prime, like Anaxo, was a fund that set up with people from the bank. People that had the knowledge of the way things work, they had the contacts to Sonja Kohn and Madoff and HSBC and so on. They were able to create exactly the same constructions that they had when they were at the product unit of the bank.

So why did they not go back to the bank when they wanted to start a new fund? One answer might be that at the bank it was becoming increasingly hard to persuade big institutional investors, for example insurance companies or other banks or trusts or family estates, to invest in Madoff products without a *little something* on the side. Not everybody, but there were certainly those who could be persuaded if the decision-makers were provided with a suitable kickback.

In cases like this, it was only size that mattered. And in the bank, big kickbacks were becoming more of a problem. Indeed, in recent years, without naming them, several senior banking officials had to leave over allegations that they received kickbacks in various forms.

Even if the bank had been institutionalised enough to make kickbacks routine, there was still the problem that a lot of people were aware that any given inducement had been made – quite simply the paperwork passed through too many hands. With Primeo or Herald for example, it would have been very difficult.

But if you have a separate company where everybody is working towards the same ends, and you even have an in-house lawyer who is an expert on financial markets who can organise the transfer payments and the contracts and the constructions, then it could almost be the perfect crime.

The kickbacks could be 30%, or 50% or 70%. If this was in the bookkeeping of a bank it would be much more risky and difficult to hide. But in a small, exclusive closed circle, there is less risk. As an example, say there is a big trust with hundreds of millions of Euros that gives the message to a fund to say, “we are interested in investing, but ...”.

The ‘but’ is, in most cases, the commission. Yet to pay a large percentage of that back to the trust managers as a kickback is difficult if the fund it is dealing with is part of a bank, say for example Primeo. Even if you negate the rules and bypass the internal audits - a lot of people still see it. But with Alpha Prime, nobody could see it, or at least nobody that there was a reason to worry about.

In banking circles there is a popular belief, money corrupts. And the larger the control of money a manager has, the greedier they are. If a manager had access to vast sums, if they can arrange even a small percentage of that as a kickback, it would amount to a lot.

The advantage of a good lawyer on the team would have been that he knew how to set up a deal that would allow kickbacks to be laundered, and the perfect way to do

that legally was through the wrapper products – deals in Switzerland and Liechtenstein where cash was paid in with no questions asked about the source. They were a tax loophole, and meant that money from whatever source could be deposited, then taken out 10 years later with no questions asked – and that helped certain people evade difficult questions about tax back home. It did not seem to matter to the insurance companies and banks selling wrapper products that most of the money in them was possibly illegal commissions from various deals, which did not just mean Madoff. The bottom line was that anyone who wanted to get their hands on a questionable payment from whatever source could use an insurance wrapper.

In essence it was a life insurance policy into which the very wealthy placed stocks, private equity holdings and other bankable assets, exploiting tax benefits on investment income held in such policies. Wrappers were similar to trusts, which are an Anglo-Saxon legal concept, but could be set up and terminated more easily. Wrappers did not usually pay any dividends, but to those who could look at a tax free lump sum at the end of 10 years, that was of little consequence. In fact, there was no clear financial incentive to use them other than the fact the money could eventually be withdrawn legally.

But many of those who used them did end up with a problem after the rules changed. Swiss regulators decided to tighten up the laws on wrappers under pressure from the global community over its general banking secrecy stance. The changes meant that Swiss regulator FINMA was responsible for identifying the client, for determining who the person was that would get the payout, and for a raft of other measures laid out in the country's new anti-money laundering laws.

That caught many people who were already invested in them with a situation where they would face awkward questions once they took the money out. And given that they typically had a 10 year term and that wrappers had been especially popular between 2003 and 2007, it meant that a lot of people in the banking industry for example that took kickbacks might be starting to get problems around now.

People who rushed to declare income that previously had been buried, people like Ursula Radel-Leszczyński and others who admitted getting their bonuses abroad. Of course, for those in Austria that problem solves itself when they declare a *Selbstanzeige* – and pay the tax – which means they get to keep the rest. But what about the question as to whether that €1.8 million was an illegal kickback? It is not

part of the remit of the *Selbstanzeige*, and once the tax is paid the person who has owned up is free to pocket the rest, regardless of where it came from.

[REDACTED]

And that underlined another advantage of Alpha Prime - discretion. In Anaxo, very few people were involved, and of those Fischer and Zapotocky were part of the alleged conspiracy. Of course, those that took commissions are now keeping very quiet about the losses. This was a very private fund. The others were public. But not Alpha Prime. The people that invested with them wanted to be quietly – and secretly - rich. And so did the people managing their wealth.

And a final advantage of Alpha prime is that it was billed as a cash alternative, even if the prospectus showed that it was not as easy to access the money as billed, but then again few people bothered with the prospectus given the other incentives.

Alpha Prime was designed for entities with large cash surpluses, such as insurance companies, stock listed companies, banks and the super-rich. And if its managers could get some of that converted to the Alpha Prime cash substitute, it would be a substantial amount of commissions. The commissions were legal, but not always. For example, the company might make the investment, but the manager gets paid the commission, and that is illegal, but it was also very common. It was regarded as a crime that nobody really suffered from. But for those that took the money, it meant they would always be open to blackmail.

Alpha Prime only ever had one legal action to face from its investors. Could the fact that other investors might have had kickbacks have been the reason for the reluctance to proceed? Or was it fear of going up against some of the most powerful men in the land: Men who had the backing of Bank Austria?

Their former contacts at Bank Austria were a rich source of income for Anaxo, and that was part of the reason it made good sense that Peter Fischer invited for example his former employee from the 90s, Friedrich Hondl, to attend a wide variety of presentations and events. After all, as the deputy head at International Corporates, in theory he had the connections to gain access to the department's prime clients, or so it seemed. But although he was getting a substantial bonus of around €200,000 a year, he was not always the one doing the deals. Bank clients wanted to deal with their client relationship managers, and without the word of people like TLM the clients didn't want to buy Madoff products - products that were also not really in the bank's interests, even if they were certainly in the interests of the receiver of the commissions. Hondl might have been the head, and the man claiming the credit and the bonus at Bank Austria, but he was not the man doing the deals.

He would tell TLM: "There is so much money to be made, you should remember you are not a lawyer for the customer, you are an employee of the bank."

And it was in trying to correct this where they made their one mistake with Alpha Prime. They thought that it would remain secret, but then they tried to bring TLM into the club. They knew that anybody who agreed to be part of the club was tied to them forever. For those that said yes, and cashed in a bonus or kickback, it was never possible to get back out. The recipient had become part of the criminal act, and there was no way back. And that does not just mean from regulators. What might have happened if a manager had been given a kickback who then wanted to have a redemption? Might they be told: "Are you sure? Maybe take 10 minutes to think about it. There is an insurance policy. What do we do with that? Think about that as well."

People like Fischer and Zapotocky needed people like TLM. But he didn't say 'yes', he said 'no' at the infamous meeting in Vienna's Hotel Imperial mentioned earlier where he made it clear what his position was.

TLM was talked through what was effectively the prospectus to show him the names of those involved, and how important they were. Hausmaninger was for example one of the names inside the prospectus. Others were people like the wealthy and successful Adam Zielinski, who was a director together with Zapotocky and Fischer. Zielinski became an Austrian government consultant in 1986, and before that was owner and MD of Compensa Austria from 1962 to 1996. He was also reportedly the man that had been the head of the trading company that had been friends with

Zapotocky, and had then introduced him to Radel-Leszczynski who was to take over at BAWFM.

* * *

With the document TLM was shown, Fischer and Zapotocky had created something which was 60-pages long, and which to all intents and purposes was the official prospectus except that it wasn't – it was a private memorandum and that allowed them to get around all sorts of rules and regulations. It was even written on the front page of the document, it is a “private placement memorandum”. A private placement is much harder to take legal action over because it's not something where the rules are as tough. It is normally the basis for a prospectus.

This was illustrated in the memorandum section on ‘risk parameters’, where it used the same wording as had been used for the official Primeo prospectus two years earlier, and where it had been rejected. Yet two years later, for Alpha Prime, it was accepted.

The ‘*prospectus*’ controller was the Erste bank in a deal allegedly brokered by the bank’s deputy CEO Franz Hochstrasser. TLM’s two bank colleagues, Heschl and Hondl, who turned a blind eye to the Madoff products hawked by Bank Austria, later went to work in the department run by Hochstrasser. [REDACTED] [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Lawyers for an investor from Graz added that Alpha Prime Fund was a “100% copy of the Primeo Fund of Bank Austria”. By now, of course, Sonja Kohn and the conspiracy members were able to create Madoff feeder funds with ease, and they were multiplying rapidly. The conspiracy members always denied these were clone funds, because if it’s a clone fund it is an indication that this was a criminal network. But the evidence was clear.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] That in turn led to a clone of the Alpha Prime fund which was the Senator Fund, created by Radel-Leszczynski, as yet another way to feed money into BLMIS, and of course to earn fees for herself, Kohn, and Bank Medici. Radel-Leszczynski alone allegedly received millions of dollars in fees for her work, but denied it or that this allegation was the basis of her *Selbstanzeige* with the €1.8 million that she had failed to declare to the taxman.

Erste bank said they had used an external adviser to check the prospectus and pointed out that they had never actively taken part in the selling of Alpha Prime. Nor were they involved in the management of the fund. They said there was no way they could have known that the money simply went straight to Madoff because, according to the bank’s spokesman Karen Berger, it “didn’t say that anywhere”. But surely it had been the bank’s job to check that? The document may or may not have been seen by the FMA, but for those seeking to get their money back, when you know it is a clone fund, it makes it a valuable document.

Looking through the details it's clear as AdvoFin claimed that the private placement memorandum creates a structure that is essentially Primeo, hardly surprising as it is the same people that founded Primeo, people like Zapotocky and Fischer. As with the other funds, the independent capital management was done by Madoff. The court case against Erste is currently on ice, awaiting a ruling from the Austrian High Court on the prospectus liability with regards to Primeo before a decision is made on the way forward.

In the Alpha Prime 'prospectus' it is harder to look through the fees jungle, it seems to be more comprehensive than Primeo but still says little. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

It also lists the partners and their roles, Hausmaninger is there as legal adviser, but he is also listed as investment manager. That is a direct conflict of interest. The reason? The Investment Manager is a job for which Hausmaninger was entitled, according to the prospectus, to be paid from the fees. For that money he was expected to give advice. The legal advisor for the fund - which is a job that he also did and for which he was also paid - would then give a legal opinion on his own advice. That recommendation was then passed back to himself as investment advisor to agree to, and to pass on to the board after it was approved.

Hausmaninger was also in Primeo as the legal adviser, according to insiders, although it is not written down anywhere. But it is known that Hausmaninger and Kretschmer who was the Primeo architect had more of a connection than just studying together. They wrote two books together, they knew each other as children, and their families reportedly knew each other as well, so it was to all accounts a second or third generation friendship.

They were basically very close friends and a team, the legal part carried out by Hausmaninger, and in the bank Kretschmer, and with regards to tax, they must have had a 'contact' in the finance ministry. A contact that would solve problems, for example a tax file with details about a bonus payment received by Kretschmer abroad that then did not result in any 'taxation consequences'. Between them the conspiracy members must have had enormous influence. Kretschmer, for example, eventually admitted in an official interview that his bonus had been paid offshore to the Cayman

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mario Benbassat had one person to thank for giving him access to Bernie Madoff – an access that had made him a very wealthy man. That person was Sonja Kohn.

He paid her millions in fees for her work. He also created jobs for her where he admitted that there was not only nothing to do, but that if there had been, she was not qualified to do it.

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

In summary, when the Benbassats came to negotia with Madoff, the only terms to negotiate were the ones laid down by Madoff – and he wouldn't negotiate at all. He demanded he have custody of the assets, they agreed, and he demanded to be the broker, and they agreed, and he demanded to have discretion with the strategy, and they agreed. In fact, whatever conditions were made by Madoff, they were agreed to.

Alberto Benbassat was supposed to be investment manager and as a result setting the funds strategy, but when questioned about it he admitted he did not have full discretion – some instructions, he claimed, were given by Bank Austria. As they were doing nothing on any of the other funds where they were paid fees, it can only be assumed these ‘instructions’ he spoke of were also from Madoff.

How did Bank Austria become involved? The answer was as always Sonja Kohn, who had been brought in to offer advice to the Benbassats as they worked on the initial structure to gain the much prized UCITS approval. She had been involved in setting up the earlier funds, and she brought in her partners at Bank Austria, Bank Medici and BAWFM for the new project. Slowly, a structure to fool the regulators took place that was to have nothing to do with protecting their assets from fraud or controlling what was done with them, and everything to do with getting maximum fees for minimum effort.

[illegible]

For Judge Charleston trying to unravel the relationship between Bank Austria, HSBC, Madoff and the rest at a legal case over the custodians role in Ireland, the matter was further confused not only by the variety of roles individuals had, or their poor memories of what they had done in each role, but also about the fact that a great many people were also pretending to do jobs that they were not actually carrying out.

That was illustrated not just in Ireland but also over other parts of the Madoff empire. For example when Alfred Simon, who was the chairman of Primeo, was interviewed on April 13, 2009, by the Austrian FMA, he said: “Up to the point where I stepped out there was never a problem with Madoff. With regards to questions from the members of the board these were always blocked with the argument that the management of Bank Austria was responsible for checking this.”

As one insider pointed out: “He was reporting to himself because he was Head of Asset Management that was responsible for Primeo, yet he talked about himself to the FMA as if the other Alfred Simon was a clone, and he could not know what he was doing. But he’s not Dolly the sheep.”

Interviewed after Madoff was arrested, Kretschmer confirmed that such double roles were not uncommon; cases where for example people like Simon or as mentioned earlier Heschl at Primeo and in Bank Austria’s asset management were in roles that on the face of it had a conflict of interest. Kretschmer said that it had all been confirmed by the bank’s human resources department, is that true and if it was, was it legal? Could it be that the bank staff were put into key positions in order to make sure that the paperwork was speedily deleted when it all came crashing down?

Might that be what happened with Robert Zichtl, who was the right-hand of Kretschmer, and responsible for retail sales in Pioneer? Shortly after the Madoff bubble burst, he reportedly got a handsome payment to leave his post and at the same time permission from the human resources department to take up a key position at Absolute Portfolio Management GmbH, that would have allowed him access to records in the company that played a very important role in the distribution of Madoff commissions in Austria. Absolute Portfolio Management was founded under the laws of the Cayman Islands, on April 19, 1999, and is targeted under the RICO legal action from America where it is alleged it received payments from HAM for its sister company MediciFinanz’s marketing and distribution of certain Medici Enterprise Feeder Funds.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

As Judge Peter Charleston said at the time: “Bank Austria were just put in because Madoff didn’t want to be disclosed.” And even in this decision it was still not correct,

as in a meeting with the Irish Stock Exchange it was also made clear that if Thema want a listing it “will require the disclosure of the sub-investment advisor.

As HSBC BoB’s lawyer Paul Gallagher pointed out when highlighting the failings of GBC, “the directors of the Thema Fund were trying to get away without disclosing Madoff. It was only Madoff that did not want to be disclosed, they never intended to appoint anyone else as advisor”.

In the twisted debate over the investment manager though one glaring fact that emerges clearly is that there was a situation where vast fees were being paid to Sonja Kohn, Bank Austria, Bank Medici and TAM, who were claiming to do a job and being paid for a job that they were not doing. Madoff in contrast was in reality doing the job yet apparently not being paid – or so they thought.

[REDACTED]

As Judge Charleston pointed out during the HSBC Bob case: “From all the evidence I’ve seen the role of Bank Austria was entirely fictitious. They had no meaningful function and were just brought in so that the fund did not have to disclose Madoff to the Central Bank of Ireland”. He added: “The only people who didn’t know about it (Madoff) were innocent investors and the Central Bank of Ireland.”

Bank Austria were formally the investment managers, the prospectus outlined that this was indeed the case, but in reality Bank Austria were not giving independent instruction to Madoff about the actual strategy or instructions on when to go in and

[illegible]

[REDACTED]

It was the directors' responsibility to disclose, and later they all signed to say that all material facts had been disclosed, yet they did not disclose the role of Madoff. Were the Benbassats ever in doubt? It seems not. Madoff was doing 365,000 trades annually, he had such a huge reputation, and he had been in the market since 1960 as a broker, to suggest that he didn't have a good reputation and for him not to be accepted as sub-custodian was to them fundamentally wrong. So they simply worked out a way to get round the rules.

In the mudslinging that followed over who was to blame, the Benbassats argued that they felt it was OK to be so cavalier with their clients' money because they were safe in the knowledge that a major bank like HSBC had custody of their assets, the investments were there, and that was the ultimate fail safe.

They made a few checks at the start but later that ended up as simply looking at the books a few times a year, as Alberto Benbassat said himself in court: "Because the strategy was repetitive, either the portfolio was in T-Bills or it was in the strategy, the stocks held were the usual ones. They appeared so obvious, I stopped looking at it as

much." It left him and his team that by then had increased to 27 free to do the one job they did have time for, to sell, sell and sell again.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Every three months Sonja Kohn would fly into London with her husband Erwin, often weighted down with pages of research marked “Confidential”.

The paperwork was not really so confidential; in fact, it had often been put together by undergraduate students who she paid the minimum wage to. Or even better, interns who cost nothing and had simply been given raw material to repackage that was cut and pasted from the Bank Austria database.

On the face of it the reports were a profitable business, the fee to write them was about the same as they cost to print and bind, and yet she was getting well paid by Madoff’s London office, to the tune of what was on average around \$150,000 a month - which worked out at \$27 million in the 15 years she offered the service.

She would fly into London with her husband Erwin to stay at Claridges, the exclusive five-star Mayfair hotel where she had a suite, and would be handed her quarterly cheques in person in the tea room during meetings with senior MSIL executives. She also occasionally collected cheques during similar meetings at the Ritz. On other occasions her husband Erwin would go to Madoff’s London offices directly to pick up the money.

Those payments were further proof that Madoff, when he claimed that he acted alone, had not told the truth, and further evidence that Sonja Kohn at least was also involved. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Liquidators are demanding the money back from the former directors as well as Kohn. They say she should repay the money she received “given the lack of value” received by MSIL, and given her “knowledge of the impropriety of the payments”.

The court case heard how over half of the research analysed by an expert witness was found to have been completely plagiarized from publicly available sources, and only around 10% contained what appeared to be original material. The remainder was found to have been partially plagiarized.

Kohn said she was *shocked* to hear that some of her freelance staff had plagiarised reports, which meant she had been cheated by the people she commissioned to do “original research”. She said: “I would be very disappointed if the people who did the research for me did that, and I was certainly not aware of it.” But that answer did not explain how those staff appeared to have gained access to Bank Austria’s own databases for some of their information. A database for which Sonja Kohn had been

given a password to access from abroad, and from where material was passed on to the research team in some way.

Mr Pushpinder Saini QC for the liquidators said that the directors “knew that something had to be delivered to London, and this had to be done in the cheapest possible way”.

He added that former CEO Raven and other officials at the UK unit were aware the payments they were receiving from the US were a “sham”, and read out transcripts of a 2007 phone call in which Raven told another director, “We all know it’s a sham,” referring to payments made to Kohn for *advice*. Raven, a former SG Warburg executive, believed nevertheless that Madoff and his businesses were essentially honest, and was shocked when his crimes were exposed, according to his lawyer, Trevor Jenkin.

The court heard details of a taped telephone conversation in which Sonja Kohn had told former director Chris Dale that she could “send more research in case someone asked you to justify the bill.” Mr Saini added: “She had no reason to make this comment if she thought what she was doing was legitimate, but the fact is that they all knew that the research being delivered was a cover-up for something else.”

The former director Purcell added that they had known very little about Sonja Kohn: “We didn’t know who she was or her credentials. We didn’t know which bank she worked for.” But that was not quite true, he admitted there was one thing they did know about her: “We knew that she was a friend of Bernie’s.”

[illegible]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The trader, Monika Rathgeber, 45, was a farmer's daughter that had until then been described as "non-descript" by colleagues, a "grey mouse". She was sacked in a blaze of publicity that described her being escorted from the building after what local media called a 'betrayal of epic proportions', and a financial task force was sent in to clean up the mess. That this team was led by people with strong connections to both the SPÖ and the banks that sold the products (ie. those that made the mistake in the first place) seemed not to cause a disturbance. The only independent people in the team looking at the clean-up were a group of financial specialists from the Vienna-based firm Finanzbuddha – except that they weren't. When the Finanzbuddha team heard that they were being named as taking part in what they regarded as an SPÖ whitewash, they demanded an apology, and when not forthcoming they sued the Salzburg party, who were forced to retract the statement and to take the claim down from the SPÖ homepage.

The Salzburg province financial director (SPÖ) David Brenner had actually learned about the scandal on October 15, 2012, but instead of going public with the fact that there were allegedly 253 "undeclared" derivative ventures in addition to the 43 on the books, it was kept secret for six weeks. During that time they hired an investigator to examine the problem. That investigator, it has now been revealed, is the former business partner of Rathgeber's at Deutsche Bank, the bank that had earned most from

the deal. A former Deutsche Bank employee said that they earned between €30 million and €50 million per year on the speculative deals in the best years between 2004 and 2007. And that was from one bank, admittedly the main one, but still only one of several banks.

The story was then released in December, naturally the best time for such scandals to be released, as its just before Christmas and most people have the festive period on their mind.

Plenty of time for the investigative team to be expanded to look at how bad the loss was, and to see what could be done to put the matter right. Or could it be that they wanted to look at ways to bury it, and concrete it over?

This is what the news agency *Reuters* told the world 5 months after the team had been at work:

May 17 (Reuters) - Austria's Salzburg province held out hope on Friday it can unwind without losses a complex web of highly speculative trades its former budget director wove before she was sacked last year.

Salzburg has accused Monika Rathgeber of covertly borrowing 1.8 billion Euros (\$2.3 billion) over a decade to run a shadow financial portfolio of exotic investments and currency trades.

Rathgeber has denied any wrongdoing and insisted her superiors knew of the transactions she carried out to bolster Salzburg's finances. Prosecutors are investigating her for possible breach of trust and abuse of office.

The province brought in experts including veteran Vienna banker Willi Hemetsberger to help sort out the mess, and on Friday said it had sold off around two-thirds of the speculative debt package.

"From today's perspective, it seems realistic that the province can unwind the speculative portfolio without financial losses," outgoing Governor Gabi Burgstaller said in a statement.

Initial concerns that the portfolio faced a 340 million euro book loss have not been borne out. The latest snapshot showed the province's financial portfolio had a 97 million euro surplus at mid-May thanks to market developments and asset sales.

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Five months later, and under the tender ministrations of a team linked to the SPÖ and the bank that sold the toxic mess in the first place, they had sold two thirds of the shadow portfolio: And there was no loss. In fact, there had been a slight profit. The

loss of €340 million eradicated. It is a wonder why they did not give Rathgeber her job back.

And the profit was needed, the clean-up team including the man *Reuters* described as “veteran Vienna banker Willi Hemetsberger” was expensive. Hemetsberger alone got paid €2 million, and there was a success premium of up to €5 million. So he walked off with a cool €7 million.

One independent financial advice centre estimated that the book-keeping he had done had a maximum value of €300,000, was the rest a bonus for helping Salzburg to fiddle the books?

The rogue trader had acted alone, of course – that was the official line. If true though it would go against standard practice at every larger bank – especially the “famous” investment banks that were doing the big business with Salzburg – normally they would get in contact with the senior level management of their client at least once a year, ostensibly to check if there were problems, but also to check whether they were meeting their compliance obligations, for example to check that a single person such as Rathgeber was allowed to do the business she was making. If they had not checked, it meant the bank could face legal liability for potential losses. They did it as a routine to protect themselves.

Yet Salzburg claimed they were unaware what she was doing. She had been hired in 2001, known as a low-key person whose desk was always piled high with paperwork, she was certainly *not* one to show off Gucci shoes, drive a Lamborghini or take fancy holidays.

She made massive losses around 2007 and 2008 after she bought Icelandic sovereign bonds in a high risk portfolio that included foreign currency debt in Turkish lira, Russian roubles, Brazilian reais and Indonesian rupiah, as well as Greek state bonds and a host of other complicated financial products.

The losses were then hidden, she says, with the help of her political masters, who now insist she acted alone. What the paperwork that was not later shredded by the clean-up crew shows is a trader who, after initial success, overstretched herself in a bid to show how clever she was, and in doing so grossly overestimated her abilities. It also shows a political naiveté allied to the naked greed on the part of the politicians that was fuelled and bolstered by banks that were equally greedy in making promises they could not keep. Banks were rushing to Salzburg to get a slice of the pie, and the business exploded in 2003. Deutsche bank was the biggest and the first, and was

quickly followed by Bank Austria – and then suddenly the region had all the big banks looking for the Salzburg business. Everybody had an advantage, so why change it?

Everyone except the taxpayer.

Even before the news broke, Salzburg's active dealing in complex financial products had been the talk of European trading desks, according to an unnamed banker who spoke to *Reuters*. He said colleagues in Germany and Britain used to compare notes about the rich pickings to be had from selling products to Rathgeber. "You would meet people who would say 'We are earning our annual budget with Salzburg'," he recalled, expressing surprise at how the province best known as home to *The Sound of Music* would have ended up trading in such exotic investments.

Rathgeber had been trying to achieve performance by taking loans (arbitrage), meaning she needed to also pay interest on the loans. It was the typical business model of a hedge fund, but definitely not of a local council. A foreign exchange broker who said he had dealt with Salzburg recalled Rathgeber doing trades in exotic currency pairs such as Norwegian crowns and South African rand.

"We were relatively relaxed because we thought we would always get the money," he said, noting deals were always well documented. Confirmation of trades went to her e-mail address.

It also shows that despite what Salzburg says, Rathgeber did not step over any of the lines that should have been put there by her political masters because the lines did not exist. In fact, it is quite clear that the politicians gave her the possibility to do whatever she wanted. In short: She did not step over her sphere of competence or buy products that she was not allowed to, because she was allowed to buy everything, even to buy the toxic products she ended up with.

The political involvement dated back to a local government meeting from 2001 when the ÖVP were in charge, the year she was hired, initially with limits on what products she could buy. But then, when they saw the money that started to roll in, they opted to give her even more freedom. So approval was given in 2003, again by the ÖVP, for the project to be expanded into 'exotic products'. And also, it was agreed, without fiscal guarantees. That means that they were actively encouraging speculation. The door was open. Rathgeber was able to do whatever she wanted. In fact, she probably could have gone into the casino with the money if she had wanted to.

The accountancy failings however were what really created the possibility. There was a criticism that Rathgeber had fiddled the books by forging signatures, but the politicians had simply removed the part of the book-keeping department (Department 8) that should have checked up on her in the first place. It left only the front office, there was no middle office where the controlling part was. According to Finanzbuddha's Sascha Stadnikow: "This was the worst mistake that they could have done. It would be like a high risk investment bank being allowed to operate without any controlling unit. If the official authorities found out a bank was doing that, they would close it down immediately. They were doing the business in the front office without an independent controlling function. In short - they were getting involved in a high risk business where an independent check is paramount - the principle of at least two people looking at it. And they gave up that right, and instead gave her permission to do what she wanted."

The move, it turned out, was a political decision made in 2005 by Salzburg's SPÖ governor Gabi Burgstaller, who wanted to save money, and then flag up the economies to the electorate. With hindsight, saving money by axing part of a crucial government like department 8 – the department which was formed to check on finances and investments – was not wise.

Fast forward. You have a trader with a positive track record, and therefore a reputation to maintain, and enormous room for manoeuvre, any you take away the checks, then nobody should really be surprised at what happened next.

The ÖVP party were the ones that created the possibility, the SPÖ were the ones that expanded it, and in 2008 they both worked together to make sure it was buried, and concreted over. It was not about solving the problem or reducing the risk, but simply about covering it up. And they are very good at that, after all, they managed to cover it up in Salzburg for four to five years. The only party which wanted answers to questions in this period were the Greens, and yet they were deliberately incorrectly answered by finance boss and deputy governor David Brenner. He managed to not only cover it up, but also keep the leaks secure.

What the paperwork also underlines is the inaction of the politicians as to the role of Deutsche Bank which was one of the counterparties in the transactions. Firstly, it was Deutsche Bank that offered a service to reduce the risks which is fine, but you can't give that job to one of the most important counterparties. As the lesson of Madoff shows, that should never be in the same hand. As with the Madoff deals the

counterparties were deleted, but that was to ensure Salzburg kept some secrets in what they were doing with the other banks from Deutsche Bank. But nevertheless, Deutsche Bank probably knew anyway, and it was a great way to keep a handle on what deals their rivals were offering.

They were the bank offering the business and the counterparty, and they were also the risk portfolio manager. In fact, the risk management team at Deutsche Bank had created a special system just for Salzburg, and made no charge for it. Again, this is something that should have set off all alarm bells.

Another point that could have sat off the alarm bells was the Salzburg *Finanzbeirat*, which had the job of an advisory body for the council's Financial Department. But then again, as well as having Deutsche Bank doing the risk management, they also had one of the Deutsche Bank team on the *Finanzbeirat*. Also a dangerous move.

It was the same man that then ended up on the *Untersuchungsausschuss*, the investigative committee that looked into the scandal. It was still more evidence of the questionable role of Deutsche Bank in the whole thing, one that normally should be sorted out in the courts, and not through a clean bill of health certificate from 'Red Willi'.

And another point that showed the greed: Market trading is for professionals, it includes both those trading and the counterparties they decide to trade with to make sure both sides honour the deal, and that they understand what they are committing to when they make the deal. Without that the market will collapse into anarchy. Typically, the counterparty is the banks, insurance companies or big stock listed companies. What it should not have included was Monika Rathgeber and Salzburg's regional government, yet the politicians seemingly in their greed gave her the authority to join the counterparty club: To be an approved partner to the big players with the backing of the state's budget – which means taxpayer's money.

In an ideal world the folly shown in Salzburg would be an exception but it was not, other local councils also joined in the game, not just in Austria but in Germany too, blinded to the risks by the vast rewards that were possible. But where Salzburg was alone was in the sheer size of the speculations that their lone trader was making, vast sums that were allowing banks to make their annual targets on a single deal.

And very often it had worked, until the day that it didn't.

But until then Salzburg had allowed her to negotiate just like a bank – she was approved to do so, which should never have been allowed. Stock limited companies

yes, certainly banks and related institutions such as insurance companies, but never a local council. According to the law, it should never really be anybody else, but as with Madoff the councillors found ways round the law and were happy to keep the glory in the good years. When it all went wrong – they blamed it all on her.

By denying they knew what she was doing, they were effectively saying they had not looked, that nobody for example was bothered about the state pension fund the Versorgungs und Unterstützungsfonds (VUF). Once a year would have been enough, if only to check where the money for these investments was coming from. If they had really not known and were telling the truth, that check would have shown them.

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And in Vienna, Austria's SPÖ heartland, the games also continued. But in Vienna, while the rumour is that there are vast losses buried in the city's books, the fact is nobody really knows – because the council does not feel obliged to say anything. But as this book has shown, Vienna has had a lot of practice in burying things, and concreting them over.

That means officially there are not really any losses, but interestingly, in 2012 there was an interview in the Austrian business newspaper *Wirtschaftsblatt* with the city's powerful Councillor for Financial Affairs Renate Brauner, and the financial director Richard Neidinger. Of course, in the interview they did not say how much they had lost, because they are still claiming that they have not lost anything, and therefore there is nothing to admit.

But the key fact is that during the 2012 interview Neidinger admitted the city had made a Swiss Franc swap that was for 2 billion CHF, which he said worked out at €1.65 billion. If they still have that, and information available is that they do, then the difference between the point where they entered the market and the rate now would mean a loss of around €270 million. In a classic swap the money does not usually change hands until the deal is realised, and the money 'swap' takes place. As long as they don't do that, then there is not a loss, and they can sit on it in the hope of the exchange rate going back in their favour. And, of course, deny the loss, because technically that claim is perfectly correct.

Neidinger said the move had been to cash in on the interest rate differences: Basically the cost of borrowing money in Switzerland was far less. Confronted in the interview with the fact that the official state auditors had ruled that it was probably not allowed for public bodies to speculate in derivatives, and that the city of Vienna had not kept an eye on this risky business, and also that there was no official report on its progress, Neidinger responded by saying: "In principal, we don't have any derivatives business."

Asked why the auditors had reached their conclusion that Vienna *was* involved in derivative deals, he said: “There was a Euro-Francis interest rate swap which is what they are referring to. But we are of the opinion that this is not a derivatives instrument.”

The paper asked: “But the auditors were quiet clear, and they have very respected experts on their board, surely they know what a derivative is? Neidinger replied: “Even among experts there is debate about whether a pure interest rate swap should be classified as a derivative.”

The world’s most commonly used reference guide, *Wikipedia*, does define an interest rate swap as a *derivative*, which it says are “risk products carried out either to hedge interest rates or to speculate on the money markets”.

Added to speculation by the city itself is speculation by Vienna city council ‘subsidiaries’ like Wien Holding that includes the Wiener Stadthalle. But of course, these do not count as “the council”, and therefore again the losses cannot be laid at the council’s door. And in any case, there is debate whether what they were doing was even classified as ‘speculation’.

The Wiener Stadthalle lost about €7 million in what the auditor called: “speculative derivative products”. If the council is correct and what the Stadthalle was doing was not speculation and the financial instruments were not derivatives, it still allows the question: “What has a concert hall venue got to do with buying what at least in the rest of the world is regarded as highly risky financial products? The answer of course is *nothing*, unless they were ordered by their political masters to take the bank’s advice, and move into an interest rate swap. In other words; to reduce costs through speculation. The bizarre twist is that the Stadthalle could easily get the money back from the banks, as the losses clearly resulted in the way the products were made and sold, but the Stadthalle is part of the city of Vienna – SPÖ – that through the AVZ still has a stake in UniCredit Bank Austria, and to sue itself in a blaze of publicity is in no one’s interests. Or at least, no one that seems to count, like the taxpayer.

According to city finance boss Brauner again: “One always needs to distinguish between the operational business and political responsibility. Wien Holding alone includes 72 companies. What I can confirm is that as far as the city of Vienna is concerned (the owner of Wien Holding) speculation is not only not desirable, it has not taken place.”

Vienna is the master when it comes to losing money, keeping it quiet and “refusing to answer any questions”. And there is no way to get that information. Buried, and concreted over. It explain why not just local councils but also their subsidiaries have been such a popular target for the banks. That includes the Südliches Burgenland water company that claims Bank Austria had not informed it about the risks in a derivative deals where they lost €2.5 million. Likewise, the Abwasserverband Jennersdorf water company lost around €360,000 and are now pressing charges against the bank, which they said did not fully explain the danger of the investment products.

Lawyer Lukas Aigner representing the two said: “These deals are the most risky thing which one can do. No person should (ever) do this, it should only be for professional speculators, and certainly not a water board or local council.”

Local councils, technically, are restricted on what they can do if they want financial management because they are not allowed to speculate. The rub comes in the question: “How do you define speculation?” The banks were very clever in telling communities that it’s not speculation, it’s optimisation. That may make for a more user-friendly term, but it was speculation nonetheless.

In Burgenland, the regional finance minister, Helmut Bieler from the SPÖ, reassured his voters that the province would not suffer a similar fate to Salzburg: “We do not speculate with public funds. With us there is not a four-eye principle (of financial control), but rather a dozen-eye principle. It is impossible that one or two employees of the finance department can close such business deals.”

That meant he had clearly forgotten that in 2007 Burgenland lost over €60 million in a failed swap transaction scheme after they invested €150 million in 2003 into a 30-year swap transaction project. He said: “These are interest rate hedge investments (*Zinsabsicherungen*), not speculation”.

And therein lies another problem, even when councils speculate they can get round the rules because there are always enough bankers to advise them on what needs to be recorded in the books and what should be said for it to be *allowed* expenditure.

The problems known about are the tip of the iceberg, according to the consultant Gert Edlinger from HLC Communications, who put the total in Austria at €8 billion in local government losses due to speculation in structured financial products gone badly. The only cases that came to light are those where legal action has been taken –

as in the case already mentioned of Hartberg which three times made bad investment decisions.

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The margin system was in fact discussed by both the board of directors and the supervisory board, and most significantly it was discussed not at the end of 2008 when the financial crisis happened, it was discussed a year earlier in November 2007 in confidential paperwork from the department head, Fritz Galavics.

The bank later blamed the entire problem on the credit crisis, but the fact is that had they acted on the problem when they were made aware of it in 2007 it would have allowed many people to liquidate their positions before the 2008 crisis.

And that is a crucial point – had they revealed the truth and clients had liquidated their investment, then they would have not suffered the losses of the financial meltdown. By hiding the problem, to keep the client investment, they kept the annual bonuses flowing – and the clients were left to pay the cost.

The annual payments were after all due in February, but the discussions came three months earlier in November. Galavics was the head of treasury responsible to *Red Willi* Hemetsberger. The paperwork shows a significant problem for the bank with the potential to be explosive. It is so significant that it is discussed at the board level.

Hemetsberger is highly regarded, a real professional, capable of dealing with the most complicated financial products. He would have seen the risk that the banks problems over the margin system represented. Could it be related to the fact that Hemetsberger had a reason to stay until February, when the bonuses were paid, and that he had a reason to announce he was leaving at the end of May? That was shortly before the whole problem blew up?

Asked why he had left the company in an interview in August, 2008, in the Austrian daily newspaper *Die Presse* he said: “It was a job that was making me bored.”

His exit from the bank, it seemed, had been something that was a rushed decision, as evidenced by the fact that he admitted he had not had time to properly go through the process of setting up the new company that he wanted to work with as an independent advisor.

Instead he had been forced to speed things up by buying a company that was already in operation and present in the marketplace, a company that he snapped up from the investment banker Michael Tojner. He said: “It was the quickest way for me to be able to help my customers.” It was then a quick change to have the firm renamed Ithuba.

Hemetsberger admitted in the interview that in summer 2007 he had “noticed that there was likely to be an explosion on the financial markets”. He said that as a result,

he had decided to step down, but added: "If I had realised how serious it was I might have stayed. It would have at least been interesting."

Galavics on the other hand was keen to stay, he was not so highly regarded for his ability to think outside the box, it is believed he may not have seen the problems, is that why his name was on the confidential reports about the problems with the bank's margin system and not that of Hemetsberger? He was also very keen to get the job that had suddenly been vacated, perhaps without asking too carefully what the reason was that it was now so suddenly free? Hemetsberger had been in the board job since 2002. Together with Galavics, the two SPÖ stalwarts had led the treasury where so many problems had been created, as already outlined.

In Bank Austria one of the popular uses of the margin system was in foreign exchange options, it was little more than gambling on foreign currencies like Turkish lira or Icelandic crowns. Investors would buy currencies then sell them again or covert them to other currencies hoping to see a profit from the fact that the exchange rate had switched.

This business grew and grew, exploding in 2007 and 2008 when later arrivals started to see the profits others had made. Then in 2008 the financial crisis happened and these products started to collapse, together with the markets where they were being sold, and there were catastrophic losses - up to 80% to 90% of the notional value or more.

Bank customers suddenly realised what was sold to them as a "not that risky product" was actually extremely toxic.

Some had borrowed heavily on the promise of big earnings. In a classic share deal you buy the share, so you pay €100, and if the company goes bankrupt you lose the money. But in this new model people were buying shares with next to nothing or betting on foreign exchange rates with margins. When it didn't work, they were unable to pay what they had promised.

In Austria the bottom line of course was that someone needed to pay – and that was at the end always the taxpayer. Sometimes the banks had used their own savers to invest in these products, resulting in bankruptcies across Europe with the taxpayer footing the bill. A good example of foolishness using their own funds was to be found at the Austrian Hypo Alpe Adria (HGAA), but another Austrian bank the Kommunalkredit was also a classic case. Kommunalkredit was a bank that financed local communities, and it was also a bank that had speculated heavily with Credit

Default Swaps, and as a result needed to be bailed out. The end result was that the toxic products from Kommunalkredit were hived off to create KA Finanz, now sitting on €13.6 billion of risk positions. Up until now this has already swallowed €1.9 billion from the Republic of Austria, and there is little doubt that the final figure is likely to be far higher.

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Yet the real problem is that it remains an issue that nobody wants to talk about, and in Austria the local councils that lost money do not want to admit it. As they are not obliged to own up, they bury the fact. There is no way to find it out officially, and that is unlikely to change because it would need a law, and yet it was the politicians and banks that were working together to set up the deals in the first place. And there may have been kickbacks that would have then been exposed. Much better to admit nothing.

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After the sale to the Germans, Haider publicly boasted: "Now we are rich."

And where there was money to be made in a shady deal, Bank Austria was somehow involved, and in the TLM Files is paperwork detailing the issue of a regionally guaranteed HGAA pre-IPO exchangeable bond for €500 million. It is unlikely that most Carinthian MPs had the big picture when the leadership made the guarantee for the money that would have inflated the bank's balances before it was sold, and it was never cleared up, or even asked, who got the commission – the 2%?

But what was the significance of the bond? Selling a bank is complicated, it can be sold to a new owner but that means a cost to cover the risk, or it can be done through the stock exchange which offered the most potential for cash. In both cases to unlock the profits in the bank it needed to have a value, and by going down the stock market route that was determined by what people were prepared to pay for shares. That meant marketing and PR to emphasise the banks advantages.

An initial public offering (IPO) offers the seller the best possibility of a good price if prepared properly. In this case, it meant a bond was created with the right-to-buy shares that ultimately will drive up the share price, and therefore the profits from the sale. Because the HGAA pre-IPO bond was exchangeable, it meant that the buyer got a fixed bond and a fixed maturity which could be changed to shares, or alternatively exchanged for a return of the original cash investment.

The significance is that it offers a lot of potential for profit, without any risk. There was not even the usual lock-up period which prevents an early sale to stop speculators and to encourage people who want to invest in the long-term future of the company.

Offering the lender the right at any day, instantly, to get their money back plus interest is not only unusual, it is 100% unusual. Bank Austria had it to sell, but TLM refused, in a handwritten note someone has written the bond was described as a “milkable, egg-laying woolly pig”. Any farmer knows that an animal that gives milk, lays eggs, can be sheared for wool and at the end turned into pork just doesn’t exist. In other words, any real farmer would obviously suspect something, and so a banker should have suspected the HGAA term sheet.

Those that sold it and got the commissions would have had an easy sale, there was zero risk as it was guaranteed by the province of Carinthia, which ultimately meant the Republic of Austria. If HGAA had done well, the investors in the “milkable, egg laying woolly pig” would have made a fortune. If it did not, they would still get their money back, 100%.



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There was a vast amount of material in his files, we have concentrated on the negative, but even with all the points raised there were still very many very serious subjects that were simply not included. What was also perhaps not focused on enough is that there is a vast majority of Bank Austria staff innocent of complicity in the

