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7

Attorneys for Plaintiff
8 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 BEATA PRIORE,
16 Defendant.

Case No. SA CR 08-180-DOC
POSITION OF GOVERNMENT WITH
RESPECT TO THE PRESENTENCE REPORT
AND SENTENCING POSITION FOR
DEFENDANT BEATA PRIORE [F.R.Cr.P.
32]
Sentencing Date: April 28, 2014
Time: 1:30 p.m.
Place: Courtroom of the
Honorable David O. Carter

19 Plaintiff United States of America hereby submits its Position
20 with Respect to the Presentence Report and its Sentencing Position
21 for defendant Beata Priore.

22 Dated: April 16, 2014.

23 ANDRÉ BIROTTE JR.
United States Attorney
24 DENNISE D. WILLETT
Assistant United States Attorney
Chief, Santa Ana Branch Office
25 /S/

26 LAWRENCE E. KOLE
Assistant United States Attorney
27 Attorneys for Plaintiff
28 United States Of America

1 **I. INTRODUCTION**

2 Defendant pled guilty to all counts of the six-count indictment
3 in this case on September 17, 2013. On March 17, 2014, the United
4 States Probation Office ("USPO") disclosed its Presentence Report
5 ("PSR").

6 **II. POSITION RE SENTENCING FACTORS**

7 The United States concurs with the total offense level and
8 criminal history category calculated in the PSR by the USPO under the
9 Sentencing Guidelines. The United States also concurs with the
10 factual statements in the Offense Conduct section of the PSR.

11 **III. POSITION RE SENTENCE**

12 The government disagrees with the USPO's recommendation that a
13 downward departure and a downward variance should be made. Instead,
14 the court should sentence defendant at the low end of the Guidelines
15 range corresponding to defendant's total offense level (19). Such a
16 sentence is appropriate and sufficiently takes into account the
17 mitigating factors cited by the USPO for the following reasons.

18 Although the USPO asserts in its recommendation letter that the
19 offense level overstates the seriousness of the offense, the intended
20 loss is at the top limit of the loss bracket set forth in USSG
21 § 2B1.1(b)(1)(H). The same fourteen-level enhancement added here
22 would apply even if the loss had been far less, as low as \$400,000.
23 If the intended loss here had been even a dollar higher (i.e.,
24 \$1,000,001), the offense level would be two levels higher and the
25 applicable sentence recommended by the Guidelines would be seven
26 months higher. Because this enhancement would result even from a
27 much smaller loss, its application here does not overstate the
28 seriousness of this offense.

1 In addition, while the USPO is correct that its calculation is
2 limited to an intended loss that could not occur because the victim
3 here was, in reality, an undercover agent, defendant's conduct did
4 place others at risk. While the indictment focused on defendants'
5 attempt to defraud "Thomas Moore" (the undercover identity), the
6 evidence that can be considered at sentencing is quite broad, USSG
7 § 1B1.4 & comment. (backgr'd) (court may consider "without
8 limitation, any information concerning the background, character, and
9 conduct of the defendant," including information related to uncharged
10 conduct). The discovery produced in this case shows that defendant
11 was involved in likely fraudulent high yield solicitations of other
12 individuals.

13 On November 30, 2006, defendant sent to "Moore" a fee agreement
14 that provided for defendant to be paid 5% of the earnings from the \$1
15 million investment. PSR ¶ 24; Trial Exhibit 109 (copy attached
16 hereto). In her email message sent to "Moore" the next day,
17 defendant stated that, in addition to "Moore," there were three other
18 individuals who were "clients" that defendants were trying to get to
19 invest with TSI Consulting Group, i.e., Mr. Damji, Mr. Wenzel, and
20 Mr. Garrick. See PSR ¶ 25; Trial Exhibit 111 (copy attached hereto).
21 Defendant signed a fee agreement with Mr. Damji dated November 28,
22 2006 that was identical to that entered with "Moore." See Exhibit
23 170 (this is a newly-marked exhibit, not a document identified at
24 trial; it was assigned Bates Nos. 1701-03 in discovery and a copy is
25 attached hereto). This evidence shows that the possible loss was not
26 limited to the investment marketed to the undercover agent, which
27 could not have resulted in actual loss, but, rather, included
28 potential harm to real victims. If included here, such solicitation

1 of other investors could have increased the intended loss. Because
2 the loss calculation in the PSR is limited to only the "Thomas Moore"
3 transaction and defendant's sentence is not being enhanced based on
4 other potential victims, the offense level in the PSR does not
5 overstate the seriousness of the offense. Therefore, the court
6 should not depart from the Guidelines range.

7 In its recommendation letter, the USPO states that, in
8 sentencing co-defendant Moses Onciu after his conviction at trial,
9 the court made a six-level downward departure for overstatement of
10 the seriousness of the offense and a two-level downward variance
11 based on 18 U.S.C. § 3553 factors, resulting in a sentence of one
12 year and one day imprisonment. The USPO cites these facts in support
13 of its recommendation for a departure and variance for defendant
14 Priore here. Onciu's sentence, however, was not limited to the
15 prison term mentioned by the USPO - the court also required that
16 Onciu serve six months in custody at an RRC as a term of supervised
17 release. See Onciu Judgment & Commitment Order, Supervised Release
18 Condition #4. Accordingly, the court viewed Onciu's sentence as 18
19 months' custody. The court noted that would be equivalent to the low
20 end of the Guidelines range corresponding to a three-level downward
21 departure (based on overstatement) and a three-level variance (based
22 on personal characteristics).

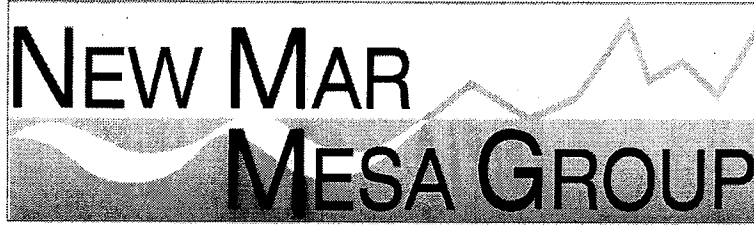
23 The government discussed above the reasons that a departure
24 based on overstatement should not be made in defendant Priore's case.
25 As for personal history and characteristics, in Onciu's case, the
26 court cited his military service and charitable work in support of
27 its decision to make a variance. In contrast to Onciu, defendant
28 Priore has no record of public service and does not have the type of

1 charitable work presented in Onciu's case. For those reasons, a
2 variance based on personal history and characteristics is not
3 appropriate here.

4 Imposing a sentence at the low end of the applicable Guidelines
5 range, rather than in the middle of the range or at the high end,
6 reduces defendant's sentence by up to seven months. That reduction
7 is sufficient to account for the mitigating factors cited by the
8 USPO, therefore, the court should not make a downward variance on
9 that basis.

10 For the foregoing reasons, the government recommends that the
11 court impose a low-end Guidelines sentence.

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3101 W. Coast Highway, Suite 100A
Newport Beach, California 92663, USA
www.newmarmesa.com
TEL: (949) 515-1560
FAX: (949) 515-1564

Fax

To: Dr Priore	From: Tom Nease
Fax: 516-908-7738	Pages: 6
Phone: 949-515-1560	Date: 12/1/06
Re:	cc:

Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

This communication, its attachments and following pages are for the intended recipient only. Should you have received this fax in error, please contact the sender and promptly destroy the copies in your possession.

Exhibit 109

Message Confirmation Report

DEC-01-2006 08:39 AM FRI

Fax Number :
Name :

Name/Number : 15169087738
Page : 6
Start Time : DEC-01-2006 08:37AM FRI
Elapsed Time : 01'48"
Mode : STD ECM
Results : [O.K]



Dr. Priore

3101 W. Co.
Newport Beach
www.n
TEL: (949) 440-1111
FAX: (949) 440-1112

Fax

To: *Dr. Priore* From: *Tom Nelson*
Fax: *516-908-7738* Pages: *6*
Phone: *944-515-1560* Date: *12/1/06*
Re: _____ cc: _____

Urgent For Review Please Comment Please Reply Please Recycle

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**3101 W. Coast Highway, Suite 100A
Newport Beach, California 92663, USA**

www.newmarmesa.com

TEL: (949) 515-1560

FAX: (949) 515-1564

MANAGEMENT FEE AGREEMENT

Dear Mr. Schaller/Ms. Pesic

This letter is our guarantee, with full responsibility, covering payment of your Management Fee, attendant upon your services toward completion of the investment.

We, our successors and assigns, affiliates, associates, partners and the like, with full responsibility, confirm and irrevocably agree, that in the event of a satisfactory transaction, as evidenced by our being party to a contract or dealing in respect of the investment envisaged by our Transaction related to 1,000,000.00 USD (one million United States dollars) held at Bank of America, 333 Hope St., Los Angeles, CA 90071, USA, that we will cause to be paid to your order, or as per your instructions to you and/or your associates, partners, an amount in equivalent to 5% (Five Percent) of all net payments made to us out of the investment of the capital invested. The above mentioned fees will unconditionally be due, and will be effected simultaneously and proportionately with receipt by our bankers of proceeds from each transaction during term of the contract.

In further consideration of your services, we irrevocably guarantee that neither we, nor associated or affiliated groups shall circumvent or attempt to circumvent your interest, or the interest of bona fide intermediaries in the contemplated transaction, during lifetime of any contract which may eventuate: including any modification, amendment, addition, extension or renewal, or any other variation of original terms and conditions, or in respect of any new business arising out of the introduction. In an event of a breach of this pay order, Swiss law will apply in a competent court in Zurich, Switzerland.

This agreement, when duly executed and delivered shall constitute the legal, the valid and binding obligation of New Mar Mesa Group, Managing Partner Thomas Moore enforceable against in accordance with its terms, and any other instrument or agreement required under this Agreement, when executed and delivered by the parties.

An executed facsimile/e-mail copy of this agreement shall have the same authority

Exhibit 109

as the original.

Yours truly,

A handwritten signature in cursive script, appearing to read "Thomas Moore", written in black ink.

Thomas Moore

Newport Beach, California
November 30, 2006

FEE PROTECTION AGREEMENT

Date : 01 December 2006
Issued by : Thomas Moore USA039282673
Beneficiary : HSH Danmark ApS. / Palle Kroeis , Passport No. [REDACTED]
Subject : FEE PROTECTION AGREEMENT / PROMISSORY NOTE
Transaction Ref. : MAX YIELDS 20061130

In recognition of the consulting services rendered by your company towards the completion of the above referenced Private Placement Investment Trading Program ("Program"), I Thomas Moore USA 039282673, hereby confirm with full corporate and legal responsibility, as the Payer, that we will honor and protect your financial interests as the beneficiary/paymaster, payable as fees (the 'Consulting Fees'), at the rate of fifteen percent (15%) of all earnings and profits received by us as contemplated by this Agreement and payable by our disbursement bank without deduction, offset or any form of taxation, and derived from funds received from said Program successfully completed and settled to us, either weekly or monthly, as per the terms and conditions set out under this Program.

This legally binding Agreement of our Payer responsibility to you shall also be our irrevocable payment instructions to the financial institution which receives proceeds funds from the above referenced Program on our behalf and for disbursement of Consulting Fees as per our order. Our bank wire transfer payments to you shall be within the next banking day of the deposit and clearance of the above referenced funds to our disbursement bank account, or as otherwise mutually agreed in writing between us.

Each recipient group shall be individually responsible for its own taxable consequences without further liability or responsibility on the part of others.

This Agreement is not transferable to third parties unrelated to the above described Program, nor is it negotiable, and may only be assigned by you with written notice, as Beneficiary, to entities through which you are beneficially associated.

This Agreement is a firm commitment for our payments to you and is a valid, legally binding instrument for the duration of the Program schedule but only so long as the program continues as per the contracted terms and conditions of the above referenced transaction, including any rollovers and extensions for which the above related parties and the transaction codes will remain the same.

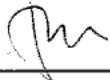
This Agreement shall become null and void in the event of the above described transaction not proceeding as per contract.

If any aspect or provision of this agreement found by a court or other authority of competent jurisdiction to be invalid ,shall not cause the remainder to be invalid, and the remaining provisions hereof shall remain fully enforceable. The invalid provision shall be replaced by a paragraph carrying the same spirit and obligation as outlined in this agreement.

It is expressly agreed that due to the sensitive nature of this project, neither party shall disclose to any other party outside of this agreement the terms and conditions or parts of this agreement.

The standard non-circumvention and non-disclosure clause will be applicable and we shall respect it.

This agreement shall be governed by and construed in accordance with the laws of Switzerland, applicable to contracts between residents of Switzerland that are to be wholly performed within such

Payer Initials: 

Beneficiary Initials: Exhibit 109

State. The parties agree that any action or proceeding arising out of or related in any way to this agreement shall be brought solely in a court of competent jurisdiction sitting in Zurich, Switzerland. This agreement, when duly executed and delivered by the parties, shall constitute the legal, the valid and binding obligation by Thomas Moore, 3101 W. Coast Highway, #100A, Newport Beach, California USA (US Passport 039282673) enforceable against them in accordance with the terms.

This Agreement may be signed in counterpart by the parties and transmitted electronically. A fully executed facsimile copy of this Agreement with electronic signature(s) shall have full force and legally binding intent as that of an original.

Upon mutual written agreement, at any time, this document may be substituted by a more formal document or amended as required between the parties.

In witness thereof the Parties hereto have executed or caused this agreement to be executed on their behalf as of the day and year first set forth opposite their signature of the signature of the authorized representative, without any mental reservation or purpose of evasion.

This Consulting Fee Protection Agreement is the full understanding between parties and is signed this 01 December 2006

The Consulting Fees of Fifteen percent (15%) to be split between parties as follows :

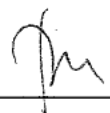
- 1. Ten percent (10%) for HSH Danmark ApS/Palle Kroeis plus German Arranger J.S.

BENEFICIARY BANK : FIONIA BANK A/S
ADDRESS : OERBAEKVEJ 75
5220 ODENSE SO
DENMARK
BENEFICIARY NAME : HSH Danmark ApS. / PALLE KROEIS
ACCOUNT NUMBER : [REDACTED] 0008
IBAN : [REDACTED] 0008
ACCOUNT NAME : HSH Danmark ApS. / Palle Kroeis
PHONE NUMBER : +45 -65935490
Account Officer : Jacob Lynge / Asmaha El Saad
SWIFT CODE : FIONDK22

- 2. Five percent (5%) for : MAX Foundation, Plus Group

BENEFICIARY BANK: DANSKE BANK A/S
NOERRE BRANCH,
FREDERIKSBORGGADE 1,1360,
COPENHAGEN K, DENMARK
TELEPHONE + 45-33367700
TELEFAX + 45-33367777
DIRECT PHONE + 45-33367708
BANK ACCOUNT NAME A. MUNCH LENDAL, ESQ, CLIENT ACCOUNT
BANK OFFICER ULLA TIMM
ACCOUNT NO [REDACTED] 028
S.W.I.F.T. DABADKK

Beneficiary: MAX FOUNDATION:
Wire Specimen: SPECIAL WIRE VERBAGE A MUST

Payer Initials: 


Beneficiary Initials: Exhibit 109

SPECIAL WIRE INSTRUCTIONS :


"SAME DAY TRANSFER, IMMEDIATE CREDIT WITH PRE ADVICE
REQUIRED MESSAGE : "THE REMITTER IS KNOWN TO US AND
WE ARE SATISFIED AS TO THE SOURCE OF THE FUNDS SENT TO YOU."

I understand that this is a legal binding agreement.
This Consulting Fee Protection Agreement
is the full understanding between parties
and is signed this November 13, 2006



For and on behalf of the Payer:


Thomas Moore (USA 039282673)
Managing Partner
New Mar Mesa Group
3101 W. Coast Highway, #100A, Newport Beach, CA 92663
949-515-1560

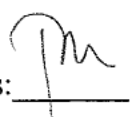
HSH Danmark ApS.

Palle Kroeis, Passport No.: 

MAX Foundation II Corp.
drbpriore@maxfoundation.us
+516 674 4455 USA


Dr. Beata G. Priore, Passport  USA

NOTARY

Payer Initials: 

Beneficiary Initials: **Exhibit 109**



Print Close Window


5:37 PM 12/01/06

lrbpriore@maxfoundation.us

investorthomasmoore@hotmail.com

Subject: Appointments]

Attachments: TSI_large.jpg (83.0 KB), TSI Consulting.doc (30.0 KB), TSI_close.jpg (67.7 KB)

Security scan upon download 

A note from the diligent office,
You should be receiving your contract Sat AM,
When you get it call me and I'll walk you through.
Regards,
Dr. Priore

Dear Beata,

please inform the clients that the appointments are as follows :

Mr Damji at 10:00 in Frankfurt
Mr. Wenzel at 11:30 in Frankfurt
Mr. Garrick at 13:00 in Frankfurt
Thomas Moore via email and mail.

When they go from airport to TSI please inform them that
they should take a Taxi and **get the receipt as TSI is paying to an from airport if
they present a receipt.**

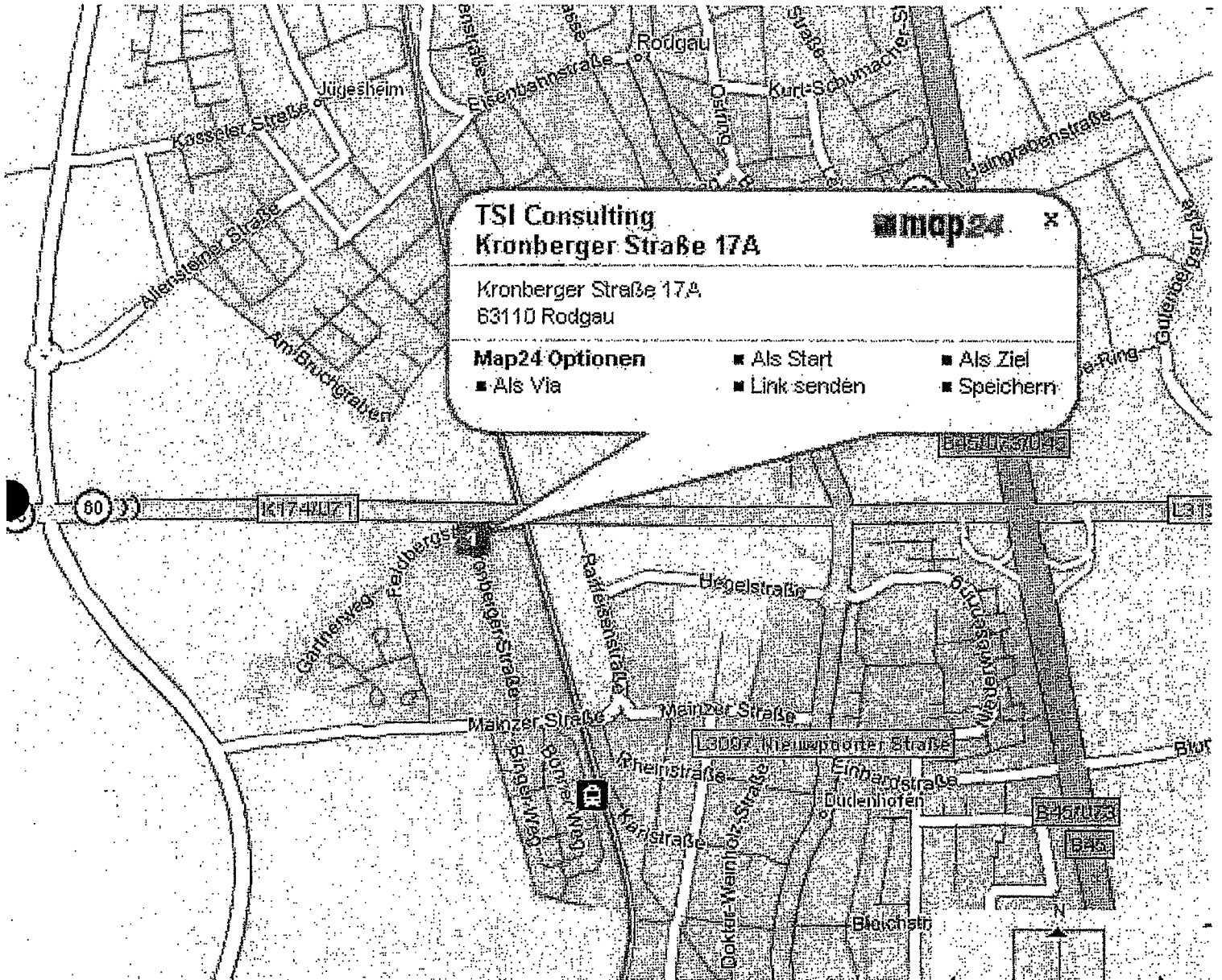
The place to go is : SEE ATTACHMENT

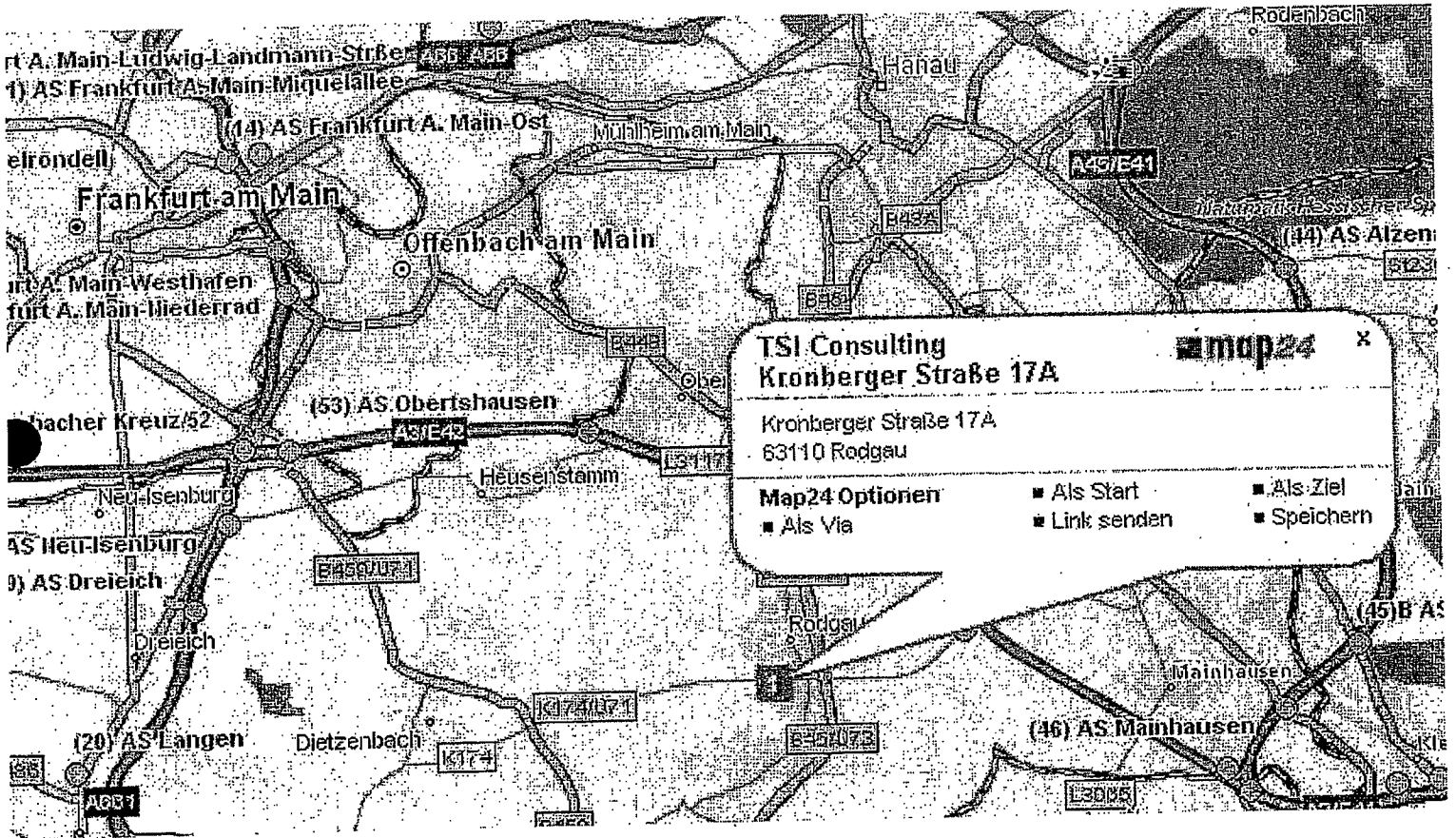
The contract will follow as it is already issued but TSI did send it to
Schaefer and he will forward as soon as he is back from Frankfurt
later today.

Please have each clients confirm their appointment.

Blessings
Palle

BullGuard Anti-virus har skannet denne e-mail og fundet den fri for virus.
Prøv BullGuard gratis: www.bullguard.com





TSI Consulting e.K.

Kronberger Strasse 17a
D-63110 Rodgau
Tel. +49 6106 - 267381
Fax. +49 6106 - 267386

http://www.tsiconsulting.info/TSI_Kontakt.htm

FEE PROTECTION AGREEMENT

Date : 28 November 2006
Issued by : SADRUDDIN N. DAMJI, Passport [redacted]
Beneficiary : HSH Danmark ApS. / Palle Kroon. Passport No.: [redacted]
Subject : FEE PROTECTION AGREEMENT / PROMISSORY NOTE
Transaction Ref. : MAX/PISD/112006

In recognition of the consulting services rendered by your company towards the completion of the above referenced Private Placement Investment Trading Program ("Program").

I, SADRUDDIN NANJI DAMJI address [redacted] Canada [redacted] hereby confirm with full corporate and legal responsibility, as the Payer, that we will honor and protect your financial interests as the beneficiary/paymaster, payable as fees (the 'Consulting Fees'), at the rate of fifteen percent (15%) of all earnings and profits received by us as contemplated by this Agreement and payable by our disbursement bank without deduction, offset or any form of taxation, and derived from funds received from said Program successfully completed and settled to us, either weekly or monthly, as per the terms and conditions set out under this Program.

This legally binding Agreement of our Payer responsibility to you shall also be our irrevocable payment instructions to the financial institution which receives proceeds funds from the above referenced Program on our behalf and for disbursement of Consulting Fees as per our order. Our bank wire transfer payments to you shall be within the next banking day of the deposit and clearance of the above referenced funds to our disbursement bank account, or as otherwise mutually agreed in writing between us.

Each recipient group shall be individually responsible for its own taxable consequences without further liability or responsibility on the part of others.

This Agreement is not transferable to third parties unrelated to the above described Program, nor is it negotiable, and may only be assigned by you with written notice, as Beneficiary, to entities through which you are beneficially associated.

This Agreement is a firm commitment for our payments to you and is a valid, legally binding instrument for the duration of the Program schedule but only so long as the program continues as per the contracted terms and conditions of the above referenced transaction, including any rollovers and extensions for which the above related parties and the transaction codes will remain the same.

This Agreement shall become null and void in the event of the above described transaction not proceeding as per contract.

If any aspect or provision of this agreement found by a court or other authority of competent jurisdiction to be invalid shall not cause the remainder to be invalid, and the remaining provisions hereof shall remain fully enforceable. The invalid provision shall be replaced by a paragraph carrying the same spirit and obligation as outlined in this agreement.

It is expressly agreed that due to the sensitive nature of this project, neither party shall disclose to any other party outside of this agreement the terms and conditions or parts of this agreement.

The standard non-circumvention and non-disclosure clause will be applicable and we shall respect it.

Payer Initials: [Signature]

Beneficiary Initials: _____

This agreement shall be governed by and construed in accordance with the laws of Switzerland, applicable to contracts between residents of Switzerland that are to be wholly performed within such State. The parties agree that any action or proceeding arising out of or related in any way to this agreement shall be brought solely in a court of competent jurisdiction sitting in Zurich, Switzerland. This agreement, when duly executed and delivered by the parties, shall constitute the legal, the valid and binding obligation by SADRUDIN NANJI DAMJI address [redacted] enforceable against them in accordance with the terms.

This Agreement may be signed in counterpart by the parties and transmitted electronically. A fully executed facsimile copy of this Agreement with electronic signature(s) shall have full force and legally binding intent as that of an original.

Upon mutual written agreement, at any time, this document may be substituted by a more formal document or amended as required between the parties.

In witness thereof the Parties hereto have executed or caused this agreement to be executed on their behalf as of the day and year first set forth opposite their signature of the signature of the authorized representative, without any mental reservation or purpose of evasion.

This Consulting Fee Protection Agreement is the full understanding between parties and is signed this 28 November 2006

The Consulting Fees of Fifteen percent (15%) to be split between parties as follows :

- 1. Ten percent (10%) for HSH Danmark ApS/Palle Kroeis plus German Arranger I.S.

BENEFICIARY BANK : FIONIA BANK A/S
ADDRESS : OERBAEKVEJ 75
5220 ODENSE SO
DENMARK
BENEFICIARY NAME : HSH Danmark ApS. / PALLE KROEIS
ACCOUNT NUMBER : [redacted]
IBAN : DK8407257648820008
ACCOUNT NAME : HSH Danmark ApS. / Palle Kroeis
PHONE NUMBER : +45 -65935490
Account Officer : Jacob Lyngge / Asmaha El Saad
SWIFT CODE : FIONDK22

- 2. Five percent (5%) for : MAX Foundation, Plus Group

BENEFICIARY BANK : DANSKE BANK A/S
NOERRE BRANCH,
FREDERIKSBORGGADE 1,1360,
COPENHAGEN K, DENMARK
TELEPHONE : +45-33367700
TELEFAX : +45-33367777
DIRECT PHONE : +45-33367708
BANK ACCOUNT NAME : A. MUNCH LENDAL, ESQ, CLIENT ACCOUNT
BANK OFFICER : ULLA TIMM
ACCOUNT NO : [redacted]
S.W.I.F.T. : DABADKK

Payer Initials: 

Beneficiary Initials: _____

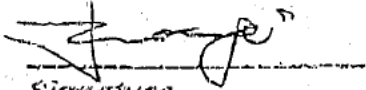
Beneficiary: MAX FOUNDATION; Trans Code MAX/PISD/I 12006
Wire Specimen: SPECIAL WIRE VERBAGE A MUST

SPECIAL WIRE INSTRUCTIONS :

"SAME DAY TRANSFER, IMMEDIATE CREDIT WITH PRE ADV CE
REQUIRED MESSAGE : "THE REMITTER IS KNOWN TO US AND
WE ARE SATISFIED AS TO THE SOURCE OF THE FUNDS SENT TO YOU."

I understand that this is a legal binding agreement.
This Consulting Fee Protection Agreement
is the full understanding between parties
and is signed this November 28, 2006

For and on behalf of the Payer: PROMINENCE INVESTMENTS LTD.


Signature

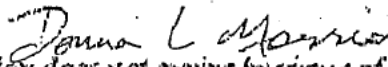
Name: SADRUDIN NANJI DAMJI, Director

Canadian Passport number: [REDACTED]

Address: [REDACTED] #218, 5403 Crowchild Trail N.W.
Calgary, Alberta T3B 4Z1

DONNA L MORRIS
Barrister & Solicitor

NOTARY



My commission does not expire by virtue of my membership of the Law Society of Alberta.

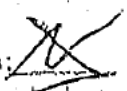
HSH Danmark ApS.

Palle Kroeis, Passport No.: DK [REDACTED]

MAX Foundation II Corp.
drbpriore@maxfoundation.us
+516 674 4455 USA



Dr. Beata G. Priore, Passport [REDACTED] USA

Payer Initials: 

Beneficiary Initials: _____