

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

Student Loan Xpress, Inc.

and

CIT Group Inc.,

Respondents.

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**COOPERATION AGREEMENT AND
ASSURANCE OF DISCONTINUANCE**

WHEREAS the Office of Attorney General of the State of New York (the “OAG”) has commenced an investigation pursuant to Executive Law § 63(12) and General Business Law §§ 349 and 350 into practices related to higher education loans offered to students and parents (the “Investigation”);

WHEREAS in the course of the Investigation the OAG reviewed extensive evidence;

WHEREAS Student Loan Xpress, Inc. (“SLX”) and its parent company, CIT Group Inc. (“CIT”) have cooperated in the Investigation by voluntarily producing evidence and answering questions relevant to the Investigation;

WHEREAS, as set forth in the findings of fact (“Findings”) below, the OAG asserts that its Investigation has revealed that many institutions of higher education and lenders that provide loans to or on behalf of students of those institutions have engaged in certain acts, practices and omissions that violated Executive Law § 63(12) and General Business Law §§ 349 and 350;

WHEREAS, as set forth below in section I(B), the OAG alleges that SLX through certain of its employees have engaged in certain of the practices that violate these statutes and have thereby corrupted the college loan process through improper relations with financial aid officers in colleges and universities;

WHEREAS CIT has suspended the employees of SLX who are alleged to have violated the law;

WHEREAS CIT agrees to cooperate with the OAG in the investigation of the employees alleged to have been engaged in the wrongdoing as well as certain college loan officers, and wishes to resolve the Investigation with respect to itself and its directors, officers, trustees and agents who were not involved in the alleged wrongdoing;

WHEREAS Respondents do not admit, and expressly deny, that SLX's conduct constituted any violation of law;

WHEREAS Respondents have advised the OAG of their desire to resolve the Investigation through this Cooperation Agreement and Assurance of Discontinuance and Cooperation Agreement (the "Assurance");

WHEREAS Respondents, without admitting the OAG's Findings and assertions made below, have agreed to alter SLX's practices with respect to education loans, to make a contribution of \$3 million to the OAG's national fund for educating and assisting students and their parents with respect to the financial aid process and to adopt a Code of Conduct for education loan practices, all as set forth specifically below;

NOW THEREFORE, the OAG, based upon the Investigation, makes the following Findings:

I. FINDINGS OF THE ATTORNEY GENERAL

A. Industry-Wide Findings of the OAG

The Investigation has covered many lenders and institutions of higher education. Based on the Investigation, the OAG makes the following findings as to common practices found throughout the nation's higher education loan industry. The Attorney General does not allege that Respondents have engaged in each of the industry wide practices, many of which practices do not apply to Respondents.

1. Many students and their families are unable to pay all of the expenses appurtenant to higher education. In addition to grants, scholarships and work-study programs, significant numbers of students and their parents turn to loans to cover what they cannot otherwise afford to pay. Higher education loans constitute an \$85 billion per year industry.

2. Higher education loans take several forms. By dollar amount, most loans are borrowed by students themselves and are federally regulated and guaranteed. The federal government has created a program for providing loans, known as "Stafford Loans," to students. The interest rate for Stafford Loans is set by the federal government. Lenders, however, have wide latitude in offering benefits to borrowers, including discounts off of that interest rate.

3. Other federal loans, known as "PLUS Loans" are offered to students' parents to cover higher education expenses incurred by their children and to graduate students. Like Stafford Loans, the federal government sets the interest rates for PLUS Loans, and lenders have wide latitude in offering borrower benefits.

4. In addition to the federal loans described above, parents or students can obtain private "alternative loans" to cover educational expenses not covered by other financial aid. The federal government does not sponsor, subsidize or guarantee alternative loans. Accordingly, the

interest rate and other terms of the loans are determined by the borrower's creditworthiness and market forces.

i. "Preferred Lender" Lists

5. In response to the staggering array of lenders that offer each of the various types of education loans, some institutions of higher education have created lists of recommended lenders. Institutions of higher education that use such lists – often referred to and referred to herein as “Preferred Lender Lists” – usually have separate lists for each of the several types of education loans available. In some instances, such Preferred Lender Lists contain dozens of potential lenders that meet certain minimal requirements; in other instances, the Preferred Lender Lists contain only a handful of lenders, or even a single one.

6. The lenders listed on an institution of higher education's Preferred Lender Lists typically receive in aggregate up to 90% of the loans taken out by the institution's students and their parents. Despite the significant role that these lists play in determining the lenders from which students and parents borrow, many institutions did not inform their student and parent borrowers about the process and criteria used to formulate the Preferred Lender Lists. Nor did they disclose the potential conflicts of interest on the part of their financial aid offices, which typically compile the Preferred Lender Lists. These conflicts of interest may arise from: revenue sharing between the institution and the lenders; lender-funded travel on the part of institutions' financial aid officials to attend meetings and seminars in attractive locations; the appointment of the institutions' financial aid officials to “Boards” or “Committees” sponsored by the lenders; and the lenders' provision of staff and services to the institutions; and the lenders' provision of “Opportunity Loans.” These practices are described below.

ii. Revenue Sharing

7. In the context of the education loan business, revenue sharing refers to an arrangement whereby a lender pays an institution of higher education a percentage of the principal of each loan directed toward the lender from a borrower at the institution. Such payment is often in exchange for the institution of higher education placing the given lender on the institution of higher education's Preferred Lender Lists. Revenue sharing is prohibited by federal regulation in the context of Stafford Loans, PLUS Loans and other federal loan programs; it occurs only in the alternative loan segment of the industry.

8. The practice of revenue sharing creates a potential conflict of interest on the part of the institutions of higher education. When and if the institutions direct students to lenders, the direction should be based solely on the best interests of the student and parents who may take out loans from the lenders; yet, through revenue sharing arrangements, the lenders encourage the institutions to place lenders in the institution's Preferred Lender Lists because the institutions have a financial interest in the selection of the lenders by the students and parents.

iii. Denial of Choice of Lender

9. Borrowers have a right to select the Stafford Loan and PLUS Loan lender of their choice, irrespective of whether the lender appears on any Preferred Lender Lists. By offering consideration in exchange for exclusive or preferred lender status, lenders encourage some institutions of higher education to abrogate this right, by stating or strongly implying that borrowers are limited to the lenders on the list.

10. In some instances, a lender may contract with an institution of higher education to be the sole name on the institution's Preferred Lender List. In exchange for being the only listed preferred lender, the lender paid money to the institution.

iv. Exclusive Consolidation Loan Marketing Agreements

11. Former students may wish to combine their various education loans into a single package, called a “consolidation loan.” Some institutions of higher education have entered into agreements with the providers of such consolidation loans pursuant to which the institution agrees to encourage its former students to consolidate the former students’ loans with a particular lender and no other. In exchange, the lender pays money or gives other consideration to the institution. The lender, thus, places the institution in a conflicted position because the institution’s advice and encouragement to potential borrowers may be influenced by the money paid or consideration given by the lender.

v. Undisclosed Sales of Loans to Another Lender

12. In many instances, institutions of higher education place several lenders on the institutions’ Preferred Lender Lists, leading the potential borrower to understand that the Preferred Lender List represents a real choice of options. But, the choice is illusory when, as sometimes occurs, all or a number of the lenders on a Preferred Lender List have arranged with each other to sell all of their loans to one of the lenders.

vi. Opportunity Loans

13. Lenders have entered into undisclosed agreements with institutions of higher education to provide what are referred to as “Opportunity Loans.” These agreements provide that the lender will make loans in the institution’s discretion up to a specified aggregate amount to students with poor or no credit history, or international students, who might otherwise not be eligible for the lender’s alternative loan program. In exchange for the lender’s commitment to make such loans, the institution may provide concessions or promises to the lender that may prejudice other borrowers.

vii. Call Centers

14. Lenders have agreed with institutions of higher education to staff “call centers” that answer the institutions’ students’ questions regarding financial aid, loans and lenders. The call centers staffed by the lenders may create another conflict of interest: The student should receive disinterested advice and information regarding lenders, but the call center staff members have an interest in advocating on behalf of the lender that pays them.

B. Findings of the OAG as to Respondents

15. Founded in January 2002, as a subsidiary of Direct III Marketing, Inc., SLX was acquired in February 2005 by CIT. From January 2002 until February 2005, SLX was an independent public company with headquarters in San Diego, California. CIT is incorporated under the laws of the State of Delaware with its headquarters in New York, New York. SLX's primary business is to originate and hold higher education loans in the United States.

16. From January 2002 until the present time, SLX sponsored advisory boards comprised of individuals from financial aid offices; SLX provided remuneration, including but not limited to reimbursement of travel and lodging fees, to the people who served on its advisory boards.

17. From January 2002 to date, SLX provided personnel to financial aid offices on a short-term basis at no charge. The personnel typically engaged in simple office tasks, such as envelope stuffing and copying.

18. SLX provided meals, entertainment and gifts to personnel at schools with which it does loan business, including reimbursement for travel and lodging to tour SLX's servicing facilities and operational headquarters in San Diego, California. SLX gave school personnel gifts that included tickets to concerts and sporting events; in some instances, the tickets were worth hundreds of dollars each.

19. SLX is listed on the Preferred Lender Lists of more than 1,100 institutions of higher learning. The OAG understands that SLX paid no referral fees to any institution of higher education.

20. SLX participates in providing opportunity loans to students at certain schools. At these schools, SLX makes private loans to credit challenged academically qualified students pursuant to these Opportunity Loan programs.

21. SLX has contracts to purchase loans from ten schools that act as lenders to graduate and professional students. SLX also provides loan origination servicing and loan servicing to these ten schools.

22. SLX had the following consulting agreements and arrangements with **certain** members or former members (or entities affiliated with such members) of its Advisory Board:

- (a) Timothy Lehmann, a financial aid officer for Capella University received \$12,400 in consulting fees from SLX;
- (b) SLX paid \$80,000 in conference sponsorship fees to Key West Higher Education Associates (“Key West”), an entity founded and run by Walter Cathie, a financial aid officer of Widener University. SLX also entered into a marketing agreement with Key West, but SLX did not pay any compensation pursuant to that agreement.
- (c) SLX had a consulting arrangement with Ellen Frishberg, a financial aid officer for Johns Hopkins University. Pursuant to the arrangement, from 2004 through 2007, while Frishberg was employed at Johns Hopkins University, SLX paid Frishberg approximately \$43,000, and an additional

\$22,000 in reimbursement of Frishberg's graduate school tuition at the University of Pennsylvania

23. Consistent with practices common in the student loan industry, SLX sponsored certain school events, such as student orientations, scholarship fundraisers, and community outreach programs; provided printing and distribution of Preferred Lender Lists and other school materials without cost to the school; and conducted training seminars for financial aid officials without cost to the school.

24. In the fall of 2001, SLX's parent corporation, Direct III Marketing, Inc. ("Direct III"), issued private placement securities to Fabrizio Balestri, who was named chief executive officer of SLX in January 2002. In late 2001 or early 2002, Balestri sold or transferred certain of these securities to the following financial aid officers:

- (a) David Charlow of Columbia University;
- (b) Catherine Thomas of the University of Southern California; and
- (c) Lawrence Burt of the University of Texas at Austin.

25. In late 2001 or early 2002, Balestri also sold or transferred Direct III securities to an acquaintance of his named Matteo Fontana. In December 2002, Fontana became an employee of the Office of Federal Student Aid at the United States Department of Education, and the OAG believes that Fontana continued to hold all or some of the Direct III securities during all or some of the period that he was an employee of the Office of Federal Student Aid at the United States Department of Education.

C. Violations

26. The OAG alleges that the acts, practices and omissions set forth in section I(B) on the part of SLX violated Executive Law § 63(12) and General Business Law §§ 349 and 350.

II. AGREEMENT

IT NOW APPEARING THAT Respondents, while they deny any violation of the laws cited in this Assurance, desire to settle and resolve the Investigation without admitting the OAG's Findings;

AND IT FURTHER APPEARING THAT SLX agrees to accept a Code of Conduct promulgated by the OAG for entities that provide and service education loans;

AND IT FURTHER APPEARING THAT CIT agrees to cause any entity, division or business unit through which it may provide or service education loans to comply with the Code of Conduct promulgated by the OAG to the same extent as SLX;

NOW, THEREFORE, the OAG and Respondents hereby enter into the Assurance, pursuant to Executive Law § 63(15), as follows:

A. Code of Conduct

i. Prohibition of Certain Remuneration to Institutions of Higher Education

27. SLX shall not provide, directly or indirectly, anything of value to any institution of higher education in exchange for any advantage or consideration provided to SLX related to SLX's higher education loan activity, including but not limited to placement on any institution of higher education's Preferred Lender List. This prohibition on providing anything of value shall also include, but not be limited to, (i) "revenue sharing" with an institution of higher education, (ii) providing an institution of higher education with any computer hardware for which the institution pays below-market prices, (iii) providing printing costs or services, and (iv) providing benefits to any institution of higher education or any institution's students for a particular type of loan in exchange for placement on any institution's preferred lender list or in favored placement on any institution's preferred lender list for a different type of loan. Notwithstanding anything else in this paragraph, SLX may continue to participate in school lender programs that are

sanctioned by federal regulations and may provide assistance to an institution of higher education as contemplated in 34 CFR 682.200(b)(definition of “Lender”)(5)(i).

ii. Prohibition of Certain Remuneration to Higher Education Employees

28. SLX shall not provide, directly or indirectly, anything of more than nominal value during any 12 month period to any officer, trustee, director, employee or agent of any institution of higher education, except that nothing in this section shall preclude an officer, trustee, director, employee or agent of any institution of higher education, or any family member thereof, from receiving a loan from SLX in the ordinary course of SLX’s business. Nothing in this paragraph shall prohibit any officer, trustee, director, employee or agent of an institution of higher education, who has no involvement in either the affairs of the institution’s financial aid office or in the institution’s financial aid decisions, from serving on a SLX board or advisory body.

iii. Limitations on Lender Advisory Boards

29. SLX shall not provide, directly or indirectly, any remuneration to or reimburse expenses of any officer, trustee, director, employee or agent of an institution of higher education for service on any advisory board of SLX.

iv. Prohibition of SLX’s Staffing of Financial Aid Offices

30. No employee, representative or other agent of SLX may staff an institution of higher education’s financial aid offices at any time where that employee has contact with students other than general debt counseling, such as in exit interviews with students concerning loan obligations they have already incurred. SLX shall take all appropriate steps necessary to ensure that none of its employees, representatives or other agents is ever identified to students or prospective students of an institution of higher education, or their parents, as an employee, representative or agent of an institution of higher education. Nothing in this paragraph prevents SLX from promoting or marketing its products or services to borrowers or potential borrowers

and/or providing education and information to students on the options, obligations and issues related to financing their education provided that SLX does so in its own name.

v. *Prohibition of Opportunity Loans*

31. SLX shall not arrange with an institution of higher education to provide any Opportunity Loans as defined above in section I(A)(vi), if the provision of such Opportunity Loans are offered in return for, or in exchange for, a specified loan volume from the institution of higher education or placement on the institution's Preferred Lender List.

vi. *Maintenance of Repayment Benefits*

32. If SLX sells, after the date of this Agreement, any education loan that it has provided, or if SLX changes the servicer of any loan it has provided, then SLX shall take all commercially reasonable steps to ensure that all benefits originally available to a borrower (or other benefits substantially identical or better) during the repayment phase of the loan and the possibility of such benefits, including any benefits that were available but for which the borrower had not yet qualified, will continue to inure to the benefit of the borrower to the same extent as if SLX had not sold or changed the servicer of the loan. If SLX purchases any education loans, it will honor all benefits promised by the seller (or other benefits that are substantially identical or better) to the borrower during the repayment phase of the loan, including the possibility of such benefits.

vii. *Full Disclosure of Sales of Loans to Another Lender*

33. SLX shall fully and prominently disclose to potential borrowers any agreement between SLX and any unaffiliated entity to sell loans SLX may make to such potential borrowers, if such sale results in SLX no longer servicing such loan.

viii. *Disclosure at the Request of Institutions of Higher Education*

34. Upon the request of any institution of higher education, SLX shall disclose to the institution, in reasonable detail and form, (i) the historic default rates of borrowers from said institution, and (ii) the rates of interest charged to borrowers from the institution in the year preceding the disclosures and the number of borrowers obtaining each rate of interest.

B. Respondents' Payment

35. In recognition of its commitment to improving the circumstances under which education financing is made available to college students and to educating the public about the financial aid process, Respondents shall pay, within 30 days of the effective date of the Assurance \$3 million (the "Assurance Amount") to the New York Attorney General's national fund for educating and assisting students and their parents with respect to the financial aid process.

C. Scope of the Assurance

36. Except as provided below, the Assurance concludes the investigation and precludes any action that the OAG could commence against Respondents and their respective current and former directors, officers, trustees and employees *other than* (a) Fabrizio Balestri, (b) Michael Shaut, (c) Robert deRose, and (d) those acting in concert with them in connection with the acts, practices, and omissions listed in section I(B) of the Assurance, for the acts, practices, and omissions listed in section I(B) of the Assurance; provided however, that nothing contained in the Assurance shall be construed, to cover claims of any type by any other state agency or any claims that may be brought by the OAG to enforce Respondents' obligations arising from or relating to the provisions contained in the Assurance. The Assurance shall not prejudice, waive or affect any claims, rights or remedies of the OAG with respect to any person, other than Respondents and their respective current and former directors, officers, trustees and employees *other than* (a) Fabrizio Balestri, (b) Michael Shaut, (c) Robert deRose, and (d) those acting in

concert with them in connection with the acts, practices, and omissions listed in section I(B) of the Assurance, all of which claims, rights, and remedies are expressly preserved, nor shall the Assurance create any rights on behalf of persons not parties to the Assurance. The Assurance does not preclude any action that the OAG may take for acts, practices, or omissions not listed in the Findings section of the Assurance, even if such acts, practices, or omissions constitute a part of the Investigation.

D. Cooperation

37. Respondents shall cooperate fully and promptly with the OAG with regard to the Investigation and any related proceedings and actions related to higher education loans. Respondents shall use their best efforts to ensure that all of their officers, directors, employees and agents also fully and promptly cooperate with the OAG in the Investigation and any related proceedings and actions, subject to their individual rights and privileges. Except where prohibited by applicable law, cooperation shall include without limitation:

- (a) Production, voluntarily and without service of subpoena, by Respondents of any information and all documents or other tangible evidence related to education loan practices reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared, subject to recognized privileges and protections for confidential information; and
- (b) Using Respondents' best efforts to cause Respondents' officers, directors, employees and agents to attend any proceedings related to education loan practices at which the presence of any such persons is reasonably requested by the OAG, and having such persons answer any and all

inquiries that may be put by the OAG to any of them at any proceedings voluntarily, and without service of a subpoena, subject to their individual rights and privileges (“Proceedings” include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing and trial).

38. In the event any document otherwise required to be provided under the terms of the Assurance is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by Respondents indicating: the type of document; the date of the document; the author and recipient of the document; the general subject matter of the document; the reason for withholding the document; and the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by Respondents, their officers, directors, employees, or agents.

39. Respondents shall not jeopardize the confidentiality of any aspect of the Investigation, including sharing or disclosing evidence, documents, or other information concerning the OAG's investigation with others during the course of the investigation without the consent of the OAG. Nothing herein shall prevent Respondents from (a) conferring with counsel or consultants, (b) providing any evidence or information to regulators, Congress or as otherwise required by law, or (c) disclosing any evidence or information originating with the Respondents' themselves in the ordinary course of business or the conduct of legal proceedings and strategy.

E. Miscellaneous Provisions

40. The Assurance is entered into Pursuant to Executive Law § 63(15). As such, evidence of a violation of the Assurance by Respondents shall constitute prima facie proof of a

violation of Executive Law § 63(12) and General Business Law §§ 349 and 350 in any civil action or proceeding subsequently commenced by the OAG.

41. If Respondents commits a material breach of any of the obligations described herein, the OAG may in its sole discretion terminate the Assurance upon written notice to Respondents. In such event, any statute of limitations or other time-related defense applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the last execution date of the Assurance and the Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Investigation, against Respondents or from using in any way any statements, documents or other materials produced or provided by Respondents after commencement of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

42. The Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles. Respondents consents to, and waives any objection to, jurisdiction and venue in New York State Supreme Court in New York County, New York.

43. No failure or delay by the OAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

44. Respondents enter into the Assurance voluntarily.

45. The Assurance may be changed, amended or modified only by a writing signed by all parties hereto.

46. The Assurance constitutes the entire agreement between the OAG and Respondents and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of the Assurance.

47. The Assurance shall be binding upon Respondents and its successors, assigns, and/or purchasers of all or substantially all its assets, provided, however, that any successor to Respondents may petition the Attorney General for relief from such undertakings.

48. The Assurance and its provisions shall be effective and binding only when it is signed by all parties. Respondents will have until August 15, 2007 to implement the provisions of this agreement. Respondents may petition the Attorney General for additional time to implement provisions under this agreement. The Attorney General shall grant that relief for a reasonable time on a showing of good cause for the delay in implementation.

49. The Assurance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

50. Nothing contained herein shall be construed as relieving Respondents of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Assurance be deemed permission to engage in any act or practice prohibited by such laws, regulations or rules. In the event that performance of any provision of this Assurance is rendered impossible by any New York or federal law, regulation, or binding directive, such law, regulation, or binding directive shall control. Notwithstanding anything else in this Assurance, Respondents may continue to engage in conduct sanctioned by federal regulations and may provide assistance to an institution of higher education as contemplated in 34 CFR 682.200(b) (definition of "Lender")(5)(i) and guidance from the Department of Education.

51. The acceptance of the Assurance by the OAG shall not be deemed approval by the Attorney General of any of Respondents' business practices, and Respondents shall make no representation to the contrary.

52. Nothing in this Assurance constitutes an admission of liability by Respondents as to any issue of fact or law. Neither this Assurance nor Respondents' agreement to enter into this Assurance may be offered or received into evidence in any action as an admission of liability by Respondents, whether arising before or after the Implementation Date.

53. Unless otherwise provided, all notices as required by the Assurance shall be provided as follows:

To the OAG:

Melvin Goldberg, Assistant Attorney General
Office of the New York State Attorney General
Bureau of Consumer Frauds & Protection
120 Broadway, 3rd Floor
New York, New York 10271
tel. (212) 416-8296
fax. (212) 416-6003

To Respondents:

Robert J. Ingato, Esq.
Executive Vice President and General Counsel
CIT Group Inc.
1 CIT Drive
Livingston, New Jersey 07039
Tel. 973-740-5664
Fax: 973-740-5264

54. Nothing in the Assurance shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against Respondents.

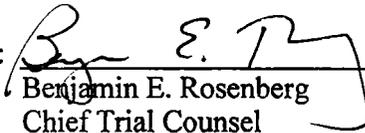
55. Respondents shall submit to the Attorney General, on or before August 15, 2007, or such date after August 15, 2007 to which the parties agree, an affidavit, subscribed to by an

officer of Respondents authorized to bind Respondents, setting forth its compliance with the provisions of the Assurance.

WHEREFORE, the signatures evidencing assent to this agreement have been affixed hereto on the dates set forth below.

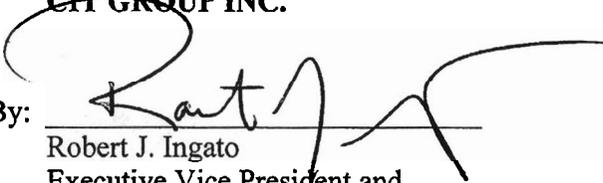
Dated: May 10, 2007

ANDREW M. CUOMO
Attorney General of the State of New York

By: 
Benjamin E. Rosenberg
Chief Trial Counsel

Dated: May 10, 2007

**STUDENT LOAN XPRESS, INC. and
CIT GROUP INC.**

By: 
Robert J. Ingato
Executive Vice President and
General Counsel
CIT Group Inc.