ATTORNEY GENERAL OF THE STATE OF NEW YORK

IN THE MATTER OF WILLIAM BRYAN WHITE	:	Investigation No. 10-113

ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)

In March 2007, the Office of the Attorney General of the State of New York (the "Attorney General"), commenced an industry-wide investigation (the "Investigation"), pursuant to Article 23-A of the General Business Law (the "Martin Act"), into allegations of "pay-to-play" practices and undisclosed conflicts of interest at public pension funds, including the New York State Common Retirement Fund. The Investigation revealed that private equity firms and hedge funds frequently use placement agents, finders, lobbyists, and other intermediaries ("placement agents") to obtain investments from public pension funds, and that many of these placement agents do not hold the licenses and registrations generally required for placement agents. This Assurance of Discontinuance ("Assurance") contains the findings of the Attorney General's Investigation as relevant here and the relief agreed to by the Attorney General and William Bryan White ("White").

WHEREAS, the Attorney General finds that trillions of dollars in public pension funds in the United States are held in trust for millions of retirees and their families and these funds must be protected from manipulation for personal or political gain;

WHEREAS, the Attorney General finds that public pension fund assets must be invested solely in the best interests of the beneficiaries of the public pension fund;

WHEREAS, the Attorney General finds that the New York State Common Retirement Fund in particular is the largest asset of the State and, having been valued at $150 billion at the time of the events described in this Assurance, was larger than the entire State budget this year;

WHEREAS, the Attorney General finds that public pension funds are a highly desirable source of investment for private equity firms and hedge funds;

WHEREAS, the Attorney General finds that private equity firms and hedge funds frequently use placement agents to obtain investments from public pension funds;

WHEREAS, the Attorney General finds that these placement agents are frequently politically-connected individuals selling access to public money;

WHEREAS, the Attorney General finds that the use of placement agents to obtain public pension fund investments is a practice fraught with peril and prone to manipulation and abuse;

WHEREAS, the Attorney General finds that the legislature has designated the New York State Comptroller, a statewide elected official, as the sole trustee of the Common Retirement Fund, vesting the Comptroller with tremendous power over the Common Retirement Fund, including the ability to approve investments and contracts worth hundreds of millions of dollars;

WHEREAS, the Attorney General finds that persons and entities doing business before the State Comptroller's Office are frequently solicited for and in fact make political contributions to the Comptroller's campaign before, during, and after they seek and obtain business from the State Comptroller's Office;

WHEREAS, the Attorney General finds that this practice of making campaign contributions while seeking and doing business before the Comptroller's Office creates at least the appearance of corrupt "pay to play" practices and thereby undermines public confidence in State government in general and in the Comptroller's Office in particular;

WHEREAS, the Attorney General finds that the system must be reformed to eliminate the use of intermediaries selling access to public pension funds, and to eliminate the practice of making campaign contributions to publicly-elected trustees of public pension funds while seeking and doing business before those public pension funds;

WHEREAS, the Attorney General is the legal adviser of the Common Retirement Fund under New York's Retirement and Social Security Law §14;

WHEREAS, White acknowledges the problems with "pay-to-play" practices and conflicts of interest inherent in the use of placement agents and other intermediaries to obtain public pension fund investments; and

WHEREAS, White embraces the Attorney General's Reform Code of Conduct attached to this Assurance and incorporated by reference herein.

I. WHITE

1. White is the sole owner of Bill White & Associates Ltd., a consulting firm.

II. THE NEW YORK STATE AND NEW YORK CITY OFFICES OF THE COMPTROLLER

2. The New York Office of the State Comptroller (the "OSC") administers the New York State Common Retirement Fund (the "CRF"). The CRF is the retirement system for New York State and many local government employees. Most recently valued at approximately $132.6 billion, the CRF is by far the single largest monetary fund in

State government and the third-largest public employee pension fund in the country. The New York State Comptroller ("State Comptroller") is designated by the legislature as the sole trustee responsible for faithfully managing and investing the CRF for the exclusive benefit of over one million current and former State employees and retirees.

3. The State Comptroller is a statewide elected official and is the State's chief fiscal officer. The State Comptroller is the sole trustee of the CRF, but typically appoints a Chief Investment Officer and other investment staff members who are vested with authority to make investment decisions. The State Comptroller, the Chief Investment Officer and CRF investment staff members owe fiduciary duties and other duties to the CRF and its members and beneficiaries.

4. The CRF invests a portion of its assets in what it terms "alternative investments," which include private equity funds and hedge funds. The CRF generally invests in private equity funds as one of various limited partners. In these investments, a separate investment manager generally serves as the general partner which manages the day-to-day investment, while the CRF invests as a limited partner.

5. The New York City Office of the Comptroller manages the assets of the five New York City Pension Funds ("NYC Pension Funds"): The New York City Employee Retirement System, The Teachers' Retirement System of the City of New York, The New York City Police Pension Fund, The New York City Fire Department Pension Fund and The Board of Education Retirement System. Each Pension Fund is financially independent and has its own board of trustees. The New York City Comptroller is the custodian and investment advisor to the board of trustees of each of the NYC Pension Funds. The NYC Pension Funds cover more than 237,000 retirees

and beneficiaries and more than 344,000 City and City-affiliated employees. As of the end of the fiscal year on March 31, 2010, the NYC Pension Funds had combined assets of $103.77 billion.

6. The CRF and the NYC Pension Funds are large and desirable sources of investment funds, and gaining access to and investments from them is a competitive process. Frequently, investment managers seeking an investment from the CRF and/or the NYC Pension Funds have retained third parties known as "placement agents" or "finders" to introduce and market them to the CRF and/or NYC Pension Funds. The CRF recently banned the use of placement agents in April 2009. By May 2009, the board of trustees of all five of the NYC Pension Funds had voted to suspend the use of placement agents.

7. Placement agents and other third parties who are engaged in the business of effecting securities transactions are required to be licensed and affiliated with broker-dealers regulated by an entity now known as the Financial Industry Regulatory Authority ("FINRA"). *See* §3(a)(4) and §15(b) of the Securities and Exchange Act of 1934. To obtain such licenses, the agents are required to pass the "Series 7" or equivalent examination administered by FINRA. In addition, the Martin Act requires that all dealers, brokers, or salesmen (e.g., placement agents) who sell or purchase securities within or from New York State must file broker-dealer registration statements with the Attorney General. *See* GBL § 359-e(3).

III. THE MORRIS/LOGLISCI INDICTMENT AND UNLICENSED AGENTS

8. As a result of the Investigation, a grand jury returned a 123-count indictment (the "Indictment") of Henry "Hank" Morris, the chief political officer to Alan Hevesi, who

served as Comptroller from January 2003 through December 2006, and David Loglisci, the CRF's Director of Alternative Investments and then Chief Investment Officer during the Hevesi adminstration. The Indictment charges Morris and Loglisci with enterprise corruption and multiple violations of the Martin Act, money laundering, grand larceny, falsifying business records, offering a false instrument for filing, receiving a reward for official misconduct, bribery, rewarding official misconduct and related offenses.

9. The Indictment alleges that Morris, the chief political advisor to Hevesi, and Loglisci, joined forces in a plot to sell access to billions of taxpayer and pension dollars in exchange for millions of dollars in political and personal gain. Morris steered to himself and certain associates an array of investment deals from which he drew tens of millions of dollars in so-called placement fees. He also used his unlawful power over the pension fund to extract vast amounts of political contributions for the Comptroller's re-election campaign from those doing business and seeking to do business with the CRF. Loglisci pled guilty to a Martin Act felony in March 2010. In July 2010, seventy-seven of the counts charged against Morris were sustained.

10. The Investigation also revealed that forty to fifty percent of the agents receiving placement fees for obtaining investments from the CRF and NYC Pension Funds were unlicensed agents. As a result of this finding, the Attorney General issued subpoenas to over 100 investment firms and their agents in May 2009 targeting the use of unlicensed agents.

IV. FINDINGS AS TO WHITE

Guggenheim

11. On or around July 1, 2004, White became affiliated with Ariane Capital Partners LLC ("Ariane"), a registered broker-dealer. On January 25, 2005, White entered into a finder agreement with Ariane, for the purpose of seeking and obtaining investments for the following fund managers: Guggenheim Advisors, LLC, Palladium Equity Partners, Hicks, Muse, Furst & Tate, and Cypress Grove International Partners. White did not become licensed with FINRA until on or around December 19, 2007.

12. On January 28, 2005, Guggenheim Advisors, LLC entered into a placement agent agreement under which Pali Capital, Inc. ("Pali") would serve as a referral agent and Ariane would serve as a sub-referral agent, for the purposes of seeking a CRF investment in Guggenheim Partners Select State Fund, L.P (the "Guggenheim Fund"), which is a fund of hedge funds. An earlier draft of this agreement named both White and a second individual as representatives of Ariane. White's name was removed from the executed agreement of January 28, 2005 however, due to the fact that White did not hold a securities license.

13. On or around February 1, 2005, the CRF made an initial capital contribution of $100,000,000.00 to the Guggenheim Fund. From on or around October 1, 2005 through on or around May 1, 2007, the CRF increased its capital contributions to the Guggenheim Fund on six occasions. In total, the CRF contributed $500,000,000.00 to the Guggenheim Fund.

14. From on or around July 7, 2005 through on or around July 25, 2007, Guggenheim Advisors, LLC paid Ariane a total of approximately $1,300,000.00 in placement fees in connection with the CRF's investment in the Guggenheim Fund. White in turn,

received in excess of $570,000.00 of the Guggenheim Fund placement fees from Ariane, despite the fact that he had been removed from the aforementioned placement agent agreement due to his not holding a securities license.

15. On or around January 27, 2005, Pali filed a disclosure letter with the CRF, disclosing that placement fees were to be paid by Guggenheim Advisors, LLC to Pali and Ariane in connection with the CRF investment in the Guggenheim Fund. The letter further disclosed the names of the registered representative of Pali and the registered representative of Ariane. White, however, was not disclosed, as his name had been removed from an earlier draft of the disclosure letter.

16. In or around October 2006, White solicited and received contributions to Alan Hevesi's re-election campaign from two principals of Guggenheim Advisors, LLC. These contributions totaled $50,000.00.

Consulting and Other Fees Received by White

17. White also received consulting and other fees in connection with CRF investments in the City Investment Fund, L.P. ("CIF") and the Cypress Grove International Fund (the "Cypress Grove Fund"). In addition, White received fees in connection with CRF and NYC Pension Fund investments in Palladium Equity Partners III, L.P. (the "Palladium Fund"). These fees were received at various times, both before and after White became licensed with FINRA. White received the fees in connection with the Palladium Fund and the Cypress Grove Fund through Ariane, a registered broker-dealer with which he was affiliated.

AGREEMENT

WHEREAS, White wishes to resolve the Investigation and is willing to abide by the terms of this Agreement set forth below;

WHEREAS, White does not admit or deny the Attorney General's findings as set forth in this Assurance;

WHEREAS, the Attorney General is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15), and to discontinue, as described herein, the Investigation of White;

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, as follows:

I. CODE OF CONDUCT

18. The Attorney General and White hereby enter into the attached Public Pension Fund Reform Code of Conduct, which is hereby incorporated by reference as if fully set forth herein. White agrees to fully abide by the terms of the Code of Conduct as it pertains to him.

II. LICENSING

19. White agrees that henceforth, prior to engaging in any business effecting securities transactions, he will obtain all required licenses, will affiliate with a broker-dealer regulated by FINRA and will file any broker-dealer registration statements with the Attorney General as required under the Martin Act.

III. FUTURE PAYMENTS DUE

20. White agrees to forgo any future payments due to him in connection with the aforementioned CRF and/or NYC Pension Fund investments in CIF, the Guggenheim Fund, the Cypress Grove Fund, and the Palladium Fund.

IV. PAYMENT

21. Upon the signing of this Assurance, White agrees to turn over ONE MILLION ($1,000,000.00) DOLLARS to the State of New York. This payment shall be made in the following manner by wire transfer according to instructions to be provided by the Attorney General:

a. Within thirty days of the effective date of this Assurance, White shall pay $250,000.00.

b. Within one year of the effective date of this Assurance, White shall pay an additional $250,000.00.

c. Within two years of the effective date of this Assurance, White shall pay an additional $250,000.00.

d. Within three years of the effective date of this Assurance, White shall pay an additional $250,000.00.

22. White agrees that he shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 21 above.

V. GENERAL PROVISIONS

23. White admits the jurisdiction of the Attorney General. White is committed to complying with relevant laws to include the Martin Act, General Business Law § 349, and Executive Law § 63(12).

24. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Martin Act, General Business Law § 349, and/or Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General against White.

25. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by White has occurred, White shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

26. If White defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to White. White agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, White expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against White, or from using in any way any statements, documents or other materials produced or provided by White prior to or after the date of this

Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as otherwise provided in a written agreement with the Attorney General.

27. Except in an action by the Attorney General to enforce the obligations of White in this Assurance or in the event of termination of this Assurance by the Attorney General, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of White in any civil, criminal or administrative proceeding in any court, administrative or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance.

28. White will fully and promptly cooperate in the Investigation. Such cooperation shall include, without limitation, and on a best efforts basis:

a. Production, voluntarily and without service of a subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General, and any compilations or summaries of information or data that the Attorney General requests that White prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;

b. Without the necessity of a subpoena, having White attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of White is requested by the Attorney General and having White answer any and all inquiries that may be put by the Attorney General to him at any proceedings or otherwise; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;

c. Fully, fairly and truthfully disclosing all information and producing all records and other evidence in his possession, custody or control relevant to

all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and

d. Making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations call for the disclosure of information protected by the attorney-client and/or work product privileges.

29. In the event White fails to comply with paragraph 28 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to other available remedies.

30. The Attorney General has agreed to the terms of this Assurance based on, among other things, a sworn financial affidavit provided by White and the representations made to the Attorney General and his staff by White, his counsel, and the Attorney General's Investigation. To the extent that the sworn financial affidavit or representations made by White or his counsel are later found to be materially incomplete or inaccurate, this Assurance is voidable by the Attorney General in his sole discretion.

31. White shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

32. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to White:
Steven G. Kobre
Kobre & Kim LLP
800 Third Avenue
New York, NY 10022

If to the Attorney General:
Office of the Attorney General of the State of New York
120 Broadway, 25th Floor
New York, New York 10271
Attn: Linda Lacewell

33. This 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.

34. White consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

35. White agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects White's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

36. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

37. This Assurance constitutes the entire agreement between the Attorney General and White and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance. No representation, inducement, promise, understanding, condition or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

38. In the event that one or more provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

39. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

40. Upon execution by the parties to this Assurance, the Attorney General agrees to discontinue, pursuant to Executive Law § 63(15), this Investigation as and against White solely with respect to his marketing of investments to public pension funds in New York State.

41. Any payments and all correspondence related to this Assurance must reference Investigation No. 10-113.

WHEREFORE, the following signatures are affixed hereto on the dates set forth below.

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

By:_____
Andrew M. Cuomo
By: Ellen Biben, Special Deputy Attorney General for Public Integrity
120 Broadway
25th Floor
New York, New York 10271
(212) 416-6199

Dated: September 16, 2010

By:_____
William Bryan White

Dated: September 15, 2010