

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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In the Matter of the

Assurance No. 14-007

Investigation of BlackRock, Inc.

by Eric T. Schneiderman,

Attorney General of the State of New York

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

In July 2012, the Office of the Attorney General of the State of New York (the “Attorney General”), commenced an investigation of BlackRock, Inc., pursuant to Article 23-A, Section 352 *et seq.* of the General Business Law of New York (the “Martin Act”) and Section 63(12) of the Executive Law of New York, concerning BlackRock, Inc.’s conduct related to its Analyst Survey Program (the “Investigation”).

This Assurance of Discontinuance (the “Assurance”) contains the findings of the Attorney General’s Investigation and the relief agreed to by the Attorney General and BlackRock, Inc. (collectively, “the parties”).

FINDINGS

A. Background

1. BlackRock, Inc. is the world’s largest asset manager with approximately \$4 trillion in assets currently under management. BlackRock, Inc. has over sixty offices in twenty nine countries, including the United States, Canada, Mexico, Brazil, Chile, Columbia, Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland,

Slovakia, Spain, Sweden, Switzerland, Dubai, South Africa, China, India, Japan, Korea, Singapore, Taiwan and Australia. BlackRock, Inc.'s principal place of business is 55 East 52nd Street, New York, NY 10022, and it is listed on the New York Stock Exchange. BlackRock, Inc. is incorporated in Delaware.

2. In June 2009, BlackRock, Inc. announced its acquisition of Barclays Global Investors ("BGI").

3. BlackRock maintains business relationships with many of the world's largest financial institutions, including brokerage houses, and on an annual basis directs billions of dollars in securities trading through many of these financial institutions. Many of these institutions also have research groups that employ stock analysts who regularly publish research reports.

4. Analyst reports typically include an analyst's estimated corporate earnings-per-share forecast, target price, and buy, sell or hold recommendation for the companies covered by a particular analyst (the "covered companies").

5. Brokerage firms and associated persons, including analysts, are prohibited by self-regulatory organization rules, internal policy and federal and state laws from disclosing research reports selectively prior to their dissemination to all customers that are entitled to receive such reports.

6. Because brokerage firm customers and certain other investors may be influenced by the information contained in analyst research reports in connection with their investment decisions, the information contained in certain analyst research reports is generally considered to be market moving.

7. Brokerage customers expect that the information contained in analyst research reports will not be disseminated to a few select brokerage customers prior to those reports being broadly disseminated to all brokerage customers that are entitled to receive those reports. Consistent with this expectation, certain brokerage firms' research reports specifically note that "All research reports are disseminated and available to all clients simultaneously through electronic publication to our internal client websites."

8. It is BlackRock, Inc.'s position that the Analyst Survey Program (the "survey program") was an effort to quantify research analysts' publicly available qualitative insights for use in quantitative trading models developed by Scientific Active Equities ("SAE"), the quantitative investment group within BGI (and now within BlackRock, Inc.). Analysts participated in the survey program with the knowledge and consent of their brokerage firms.

9. The survey program asked analysts to answer a series of questions related to the companies they were covering. Though the specific format of the survey questions varied over time and across SAE's global operations, the survey generally solicited, in numeric form, information regarding management, competitive position, earnings, and other important aspects of analysts' views on the covered companies.

10. The U.S. surveys typically asked analysts to answer questions on a scale of 1 through 9, with a "1" indicating the strongest negative response, a "9" indicating the strongest positive response, and a "5" representing a neutral response.¹

11. The answers of the analysts were aggregated and averaged together for each issuer.

¹ In certain other geographic regions, the surveys used a scale of "1" through "5" with a "3" representing a neutral response.

12. The survey program was developed by BGI in Australia in 2003. In 2004, the survey program was rolled out in the U.S. It was subsequently expanded to other regions across the world. The survey program was implemented by BGI in Europe and Japan in 2007 and in each of Asia (excluding Japan), Canada and Latin America in 2008. Along with the U.S. survey responses, the responses to international surveys in some measure influenced trading decisions in SAE's investment funds that were available to, and invested in, by U.S. investors.

13. Since its inception, the survey program obtained hundreds of thousands of responses from many of the world's most prominent stock analysts at dozens of brokerage firms.

14. The analysts at these brokerage firms were surveyed on a quarterly or monthly basis, depending on the geographic region.

15. As a quantitative investor, SAE's investment decisions are data-driven. SAE derives "signals," or individual quantitative return forecasts, from information obtained from various sources, including public filings. Signals are the result of a research process, and are designed to capture factors such as earnings growth, book-to-value ratios, valuations, momentum and market sentiment. SAE's signals are combined in a variety of ways in SAE's quantitative trading models, which also incorporate additional non-signal based considerations, such as perceived risk, trading costs and portfolio specific constraints, in determining the optimal trade list to achieve the target portfolio.

16. SAE aggregated and averaged the survey responses before converting them into signals. These signals were expressed as numeric values that were used in SAE's quantitative trading models. SAE determined the strength of each signal in each of its models by modifying the relative weight it assigned to each signal. The weights assigned to survey signals varied greatly, but once reached as high as 19% in two of SAE's quantitative trading models in

February 2011. Weights were changed numerous times, but “live” survey based signals were generally weighted approximately 5% in SAE’s quantitative trading models.

17. SAE bought and sold certain securities based, in part, on survey program signals. SAE currently has assets under management of over \$80,000,000,000.

B. Covered Conduct

18. During the course of the Investigation, BlackRock asserted that the purpose of the survey program was to quantify analysts’ qualitative views as expressed in previously published research reports, notes, telephone calls, meetings, investor conferences, road shows, television interviews, speeches and other forums, and convert that information into numbers that could then be fed into SAE’s trading models.

19. The introduction to the surveys provided:

We would like to highlight the fact that we are only interested in public information. Please only share with us information that you publish through your research notes, investor calls, and/or disclose in client meetings.

20. Additionally, survey participants were asked the following two questions. Unless they answered “yes” to each question, they were not allowed to participate in the survey.

a. “Do you agree to base your answers only on your public stance, which is defined as information you would disclose to other clients?” and

b. “Do you understand that this is confidential and will only be used for BlackRock’s investment management purposes?”

21. Certain other questions also contained reminders that SAE was only interested in the analyst’s “public stance.”

22. Despite the aforementioned disclaimers, the Attorney General’s Investigation uncovered evidence indicating that the survey program’s design allowed it to capture more than previously published analyst views, including non-public analyst sentiment that could be used to

trade ahead of the market reaction to upcoming analyst reports. The Investigation revealed the following:

23. *First*, the design of the survey program allowed it to obtain information from analysts that could reveal forthcoming revisions to their published views about the companies they were covering.

24. At least at the survey program's inception, SAE believed that it could use certain survey responses to attempt to "forecast" or predict analysts' "next estimate revision."

25. An internal BlackRock document states that "[t]he purpose of the survey is to get ahead of analysts' actions (upgrades/downgrades), get a direct measure of their internal probability distribution around their forecasts and get some more nuanced information about what they really think."

26. An internal SAE document states the program's success depended in part on an "analyst['s] willingness to really give us advance information."

27. An internal SAE document states that "we're agnostic as to whether rec[ommendations] themselves are useful investment info. We are trying to front-run rec[ommendations]."

28. *Second*, the timing of the distribution of survey questionnaires made them susceptible to obtaining "advance information" that could be used to trade ahead of future analyst revisions.

29. If SAE had been solely interested in the views expressed in an analyst's most recent report, it should have required that the survey program responses be provided contemporaneously with a given analyst's report. Logically, the later an analyst's survey response is provided after a prior published report, the greater the risk that factors that have

changed since the report's publication will affect the analyst's response to the survey. Likewise, the later in time an analyst's survey response was provided after his or her prior report—and the closer it was to his or her next report—the more likely the survey could capture information not in the prior report, but rather reveal the analyst's views to be expressed in his or her forthcoming report.

30. The Attorney General's review of certain survey responses revealed that answers were frequently received several weeks or longer after analysts' prior published research reports.

31. While surveys were distributed before and after earnings season, an SAE spreadsheet titled "Analyst Survey Timing" shows that SAE planned "targeted survey waves" just before the covered companies' "heavy earnings season[s]," which typically precede analyst reports about those covered companies.

32. Also, an SAE document notes that "In the US...[g]enerally, the surveys are distributed in advance of earnings season to take advantage of the informational content that is related to analyst changing expectations of earnings prior to a firm releasing EPS [earnings per share] numbers."

33. *Third*, the structure of the survey made it susceptible to obtaining information that was not generally disclosed in analyst reports or that was different than analysts' previously published reports.

34. For example, one survey program question asked analysts to provide their views on the likelihood of the covered company being acquired in a merger.²

² The question asks "Excluding transactions actually announced, what is the likelihood this company will become an acquisition target? [1=Low likelihood, 9=High likelihood]; N/A"

35. This question expressly instructed analysts to “Exclud[e] transactions actually announced.” Between March 2009 and March 2010, in response to the U.S. survey program questions, SAE collected almost 8,000 answers regarding potential acquisition activity.

36. Another survey question asked the analysts for their views on the likelihood, and direction, of a surprise to their forecasted earnings estimate (“earnings surprise direction”).³ An answer other than a neutral “5” would indicate that an analyst held a belief that there was a likelihood that the covered company’s earnings would not be in line with the analyst’s previously published views. The Attorney General’s review of certain survey responses revealed that analysts did not always opine on this subject in their prior published research reports. Between March 2009 and January 2013, in response to the U.S. survey program, SAE collected approximately 60,000 answers indicating an earnings surprise direction other than neutral.

37. SAE documents suggest that the question also sought to understand the “skewness” of the analysts’ estimates of possible future earnings scenarios. “Skewness” is a statistical term that refers to asymmetry from the normal distribution in a set of data – the distribution of the different earnings scenarios in an analyst’s model that contributed to the analyst’s published estimates. The “skewness” of an analyst’s estimate shows the distribution of probabilities of the different scenarios that the analyst considered in making his or her final published estimate. For example, an analyst might have considered a range of earnings scenarios for a company and used the median as his or her estimate. The earnings surprise direction response provided insight into whether the analyst’s assignment of the probabilities of each of these scenarios was less likely or more likely than their final earnings estimate, i.e. the

³ The question asks “What is your public stance on the direction of earnings surprise that is more likely relative to your current annual estimate (next 12 months)? [1=large underperformance, 9=large outperformance, 5=both directions equal]; N/A”

“skewness”. Analysts’ views of the distribution of probabilities in earnings outcomes may be “skewed” or fall mostly on one side of their earnings estimates.

38. The Attorney General’s investigation found that the “skewness” of an earnings’ estimate is rarely set forth in published analyst reports. In short, this is another means by which the survey program could obtain information not generally available in already published analyst reports.

39. *Fourth*, SAE leveraged BlackRock’s massive market position to help ensure that brokerage firms would respond to the survey program.

40. SAE recognized that given BlackRock’s position as a huge market participant, brokerage firms would respond to SAE’s requests where they may otherwise have been reluctant to respond to retail or other small investors. One employee noted “Current US incentive – The obvious (and unsaid incentive) for most brokers is that BGI is a huge chunk of your paycheck and the analysts better fill out their surveys for such a large client.”

41. SAE directly rewarded participating analysts with higher ratings in prominent financial industry magazine rankings. Such ratings were important to analysts for name recognition, career enhancement and as a symbol of achievement in the financial industry, all of which could lead to monetary gain both for those analysts and their respective brokerage firms.

C. Conclusion

42. SAE created a survey program that could be used to get ahead of future analyst reports.

43. SAE (both prior to and after its acquisition by BlackRock) used the survey program information, along with other signals, in its quantitative models and regularly executed

buy and sell orders based on trading lists that those models generated. Certain orders were executed through the aforementioned brokerage firms.

44. The survey program's design allowed it to receive information not necessarily disclosed in analysts' previously published research reports, giving SAE the ability to trade before the market had a chance to react to upcoming analyst reports.

VIOLATIONS

45. The foregoing conduct by BlackRock violated provisions of the Martin Act, Article 23-A of the General Business Law, and violated provisions of § 63(12) of the Executive Law.

46. BlackRock neither admits nor denies the Attorney General's findings set forth herein. However, in light of the concerns expressed by the Attorney General, BlackRock has agreed to terminate the survey program, to continue cooperating with the Attorney General's office in its ongoing investigation into this subject matter, and to take certain other remedial actions consistent with its longstanding commitment to upholding the highest ethical standards. During the course of the Attorney General's investigation, BlackRock agreed to down-weight signals related to the investigation to zero at the Attorney General's request.

PROSPECTIVE RELIEF

WHEREAS, BlackRock, Inc. has readily cooperated with the Attorney General's investigation of this matter, including by previously down-weighting signals derived from the Analyst Survey Program from SAE's U.S. models to zero at the Attorney General's request;

WHEREAS, BlackRock, Inc. has agreed to discontinue the Analyst Survey Program and to pay or cause to be paid the costs of investigation specified in this Assurance;

WHEREAS, BlackRock, Inc. has agreed to continue cooperating with the Attorney General's ongoing investigation relating to the subject matter of this Assurance;

WHEREAS, BlackRock, Inc. finds the relief contained in this Assurance prudent and appropriate, and is willing to accept this Assurance voluntarily as a settlement of the Attorney General's Investigation, and neither admits nor denies the Attorney General's Findings (1 – 45) above;

WHEREAS, the Attorney General finds the relief contained in this Assurance appropriate and in the public interest;

WHEREAS, the Attorney General is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue the Investigation;

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

WHEREAS, this Assurance is entered into solely for the purpose of resolving the Investigation, and is not intended to be used for any other purpose;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, upon the consent of the undersigned, and in consideration of the mutual covenants and agreements set forth herein, that:

I. Cease and Desist

47. BlackRock, Inc. and its subsidiaries, representatives, employees, agents, assigns, and successors-in-interest admit the jurisdiction of the Attorney General, will cease and desist from engaging in any acts in violation of the Martin Act and Executive Law § 63(12), and will comply with the Martin Act and Executive Law § 63(12).

48. BlackRock, Inc. will discontinue the Analyst Survey Program both in the United States and worldwide. Specifically, BlackRock, Inc. will cease and desist from:

- a. distributing surveys related to the Analyst Survey Program;
- b. collecting information via the Analyst Survey Program;
- c. creating or using signals based on information gathered via the Analyst Survey Program, including from past responses to the Analyst Survey Program;
- d. making investment decisions or recommendations based in any way on the information captured via the Analyst Survey Program; and
- e. conducting any systematic survey of analysts in order to gather non-public issuer specific analyst sentiments.

49. BlackRock will not use any other systematic effort to gather material non-public information in order to make investment decisions or recommendations based upon non-public issuer specific analyst sentiment.

II. Cooperation

50. BlackRock, Inc. shall continue cooperating fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners and employees of BlackRock, Inc. (and of any of BlackRock, Inc.'s subsidiaries) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to the subject matter of this Assurance.

III. Affirmative Undertakings

51. BlackRock, Inc. shall create and maintain written policies and procedures that prohibit BlackRock, Inc. from creating or utilizing any process which violates, or would violate, any portion of this Assurance. BlackRock, Inc.'s written policies and procedures will specifically proscribe any program or initiative that seeks to systematically survey analysts in order to gather non-public issuer specific analyst sentiments.

52. BlackRock, Inc. recently assigned and hereby agrees to continue to have assigned a member of its Legal and Compliance department ("L&C") to the research approval body of SAE known as the Equity Research Approval Board ("ERAB"). The L&C will help ensure that SAE does not seek to obtain improper access to analysts' views regarding the companies those analysts cover.

IV. Compliance Implementation

53. BlackRock, Inc. has Ceased and will Desist from the activities in paragraphs 48.a. through 48.e. with regard to the U.S. Analyst Survey Program as of the execution date of this Assurance.

54. BlackRock, Inc. will Cease and Desist from the activities in paragraphs 48.d with regard to Analyst Survey Programs beyond the U.S. as of the execution date of this Assurance.

55. BlackRock, Inc. will Cease and Desist from the activities in paragraphs 48.a.-48.c. and 48.e. with regard to Analyst Survey Programs beyond the U.S. by no later than March 31, 2014.

V. Costs

56. In consideration of the making and execution of this Assurance, and within seven (7) business days thereafter, BlackRock, Inc. agrees that it will pay by wire transfer, certified or bank check payable to the State of New York \$400,000.00 (four hundred thousand dollars) for the costs of this investigation.

57. Any payments and all correspondence related to this Assurance must reference Assurance No. 14-007.

58. Said payment shall in no way be construed as an admission of liability on the part of BlackRock, its directors, officers and/or employees, or an admission of any of the factual or legal allegations contained herein made by the Attorney General or a declaration against interest.

VI. Other Provisions

59. The Attorney General has agreed to the terms of this Assurance based upon, among other things, the representations made to the Attorney General by BlackRock, Inc. and its counsel, and the Attorney General's own investigation. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in the Attorney General's sole discretion.

60. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by BlackRock, Inc. or the Attorney General in agreeing to this Assurance.

61. BlackRock, Inc. represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. BlackRock, Inc. agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the propriety of this Assurance or expressing

the view, in substance, that this Assurance is without factual basis. Nothing in this paragraph affects BlackRock, Inc.'s (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and shall not be construed as an admission of liability by BlackRock, Inc..

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

63. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the Attorney General, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the Attorney General.

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

65. 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 the Attorney General, to:

Chad Johnson, Esq.
Chief of the Investor Protection Bureau
State of New York
Office of the Attorney General
120 Broadway, 23rd Floor
New York, New York 10271
Chad.Johnson@ag.ny.gov
(212) 416-8493

If to BlackRock, Inc., to:

David M. Zornow, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates
4 Times Square
New York, New York 10036
David.Zornow@skadden.com
(212) 735-2890

66. Acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of the practices or procedures referenced herein, and BlackRock, Inc. shall make no representations to the contrary.

67. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the Attorney General.

68. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance, and may make such application as appropriate to enforce or interpret the provisions of this Assurance, or in the alternative, maintain any action, either civil

or criminal, for such other and further relief as the Attorney General may determine is proper and necessary for the enforcement of this Assurance.

69. BlackRock, Inc. agrees that any action, suit, or proceeding arising out of or based upon this Assurance, or relating to the subject matter of the Investigation, may be brought in courts of the State of New York, and irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue to adjudication of any such action, suit, or proceeding.

70. This Assurance shall be construed, and the rights and obligations of the parties pursuant hereto shall be determined, in accordance with the laws of the State of New York, without regard to any conflict of laws provisions thereof that would require the application of the law of any other jurisdiction.

71. This Assurance shall not confer any rights upon persons or entities who are not a party hereof.

72. This Assurance constitutes the entire agreement between the parties concerning the subject matter of the Investigation and of the Findings above and supersedes any prior communication, understanding, or agreement, whether written or oral.

73. If a court of competent jurisdiction determines that BlackRock, Inc. has breached this Assurance, BlackRock, Inc. 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.

74. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. The Attorney General is willing to accept this Assurance pursuant to New York Executive Law § 63(15), in lieu of commencing a statutory proceeding.

75. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

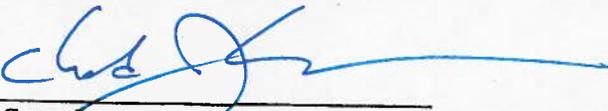
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WHEREFORE, the following signatures are affixed hereto on the dates set forth below:

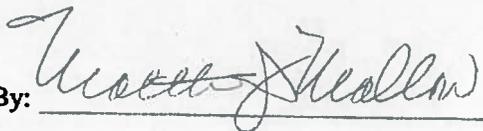
Dated: January 8th, 2014
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8493

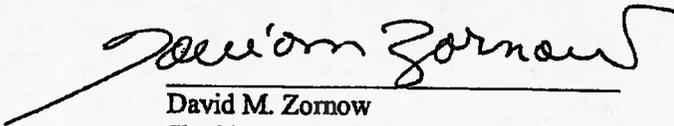
By: 
CHAD JOHNSON
Chief of the Investor Protection Bureau

Dated: January 8, 2014
New York, New York

BlackRock, Inc.
for itself and its subsidiaries

By: 

This Assurance has been reviewed by Counsel, who also certifies that the BlackRock, Inc. signatory above MATTHEW J. MALLOW is duly authorized by BlackRock, Inc. to execute the same, and that the signature above is true and authentic:


David M. Zornow
Skadden, Arps, Slate, Meagher & Flom LLP
Dated: 1/8, 2014