STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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PUBLIC INTEGRITY BUREAU

November 18, 2010

Honorable Lewis Bart Stone
New York State Supreme Court
Criminal Term, Part 31
100 Centre Street
New York, New York 10033

Re: People v. Henry "Hank" Morris and David Loglisci (Ind. No. 25/2009)

Dear Justice Stone:

We are writing to respectfully recommend that the Court approve the People's proposed plea agreement with the defendant Henry "Hank" Morris ("Morris"). We request that this letter be sealed until such time as the plea has been entered or any trial on this matter has concluded.

We strongly believe that the proposed disposition is clearly in the interests of justice. Indeed, the defendant's felony guilty plea to a Martin Act charge entailing a broad allocution validating the theories of the case, the return of $19 million to the State pension fund, the permanent ban from the New York securities industry, and state prison time to be imposed in the discretion of the Court, would obviate the need for a difficult multi-month state jury trial and provide a complete victory for the People of the State of New York.

Seven guilty pleas, nineteen civil settlements, and the recovery of over $139 million later, it might be easy to forget the skepticism that greeted the unsealing of the indictment in March 2009. At that time, New York Times columnist Jim Dwyer opined that Morris's conduct, while unethical, was probably not illegal. Dwyer wrote:

> Ask not what he did for his country: Mr. Morris did for himself.
> Yet pure self-interest may be the very reason why Mr. Morris will not again be seen in handcuffs, at least for making money off the pension fund. Mr. Morris did not work for the state; he worked for private equity funds that wanted its investments.
>
> He may be a boodler who personally betrayed his political client; he may give a bad name to ordinary decent political hacks; he may be the liveliest proof you will ever find for a saying that was once posted in the office of a New York political boss: "Crime does not pay …. as well as politics."

None of that, however, necessarily means that Mr. Morris broke the law . . . .[1]

Indeed, lawyers and commentators have repeatedly expressed doubt as to whether Morris could be convicted on the charges.[2] After an early court appearance, the media wrote stories with headlines such as, "Judge Sees 'Novel' Aspects in NY Pension Probe."[3] That Reuters article reported the Court's remark at the appearance that Morris was not a state employee, which raised an interesting issue that would likely lead to an appeal. The article also stated, "[Morris's] lack of a direct relationship may raise questions about whether he was required to disclose, for example, the fees he was paid from investment firms that sought business from the state pension fund."[4]

The transcript of that appearance reflects the Court's observation that there was "probably little precedent out there for these Martin [Act] claims in this case," that this was not an "ordinary case," and that it would be "useful to get guidance" from the parties because of what the Court termed the "novel claims under the Martin Act."[5] The Court further observed that the trial would take several months because it was "a very complex case."[6]

Similarly, defense counsel has argued that Morris's conduct may have been unethical, but not illegal. In moving to dismiss the case, defense counsel wrote: "[T]he simple fact is that no matter how much the Attorney General disapproves as a matter of policy or ethics of the web of relationships that provided access and influence in the CRF investment process, there was no crime here," and "none of this conduct violated any law."[7]

To be clear, the People remain confident in the factual and legal underpinnings of the charges, which the Court sustained in a comprehensive and compelling memorandum opinion. However, the fact remains that this is a unique and complex case involving the application of the Martin Act to public integrity abuses, and it is simply not comparable to other large-scale fraud cases.

Particularly given this context, and for the reasons set forth below, the proposed disposition of the criminal case is in the interests of justice and should be approved by the Court.

The Proposed Disposition is in the Interests of Justice and Should Be Approved by the Court

The bulk of the indictment charges Morris with multiple counts of Martin Act and related offenses, because securities fraud is the gravamen of the case. These charges are aggregated and asserted as the basis for an enterprise corruption charge against Morris. Morris, who has previously been defiant in asserting that he has not committed any crime, is now willing to plead guilty to a Martin Act felony and allocute broadly to fraudulent conduct involving all of the State pension fund transactions set forth in the indictment. This alone is a significant victory for the People in establishing once and for all that the defendant's conduct was not only unethical, but

1 Jim Dwyer, "A Lesson in Looking Out for No. 1," N.Y. Times, Mar. 21, 2009, at A15 (emphasis added).
2 See Joan Gralla, Reuters, Oct.16, 2009; see also Abramowitz and Bohrer, "The Ever-Expanding Martin Act: Has It Reached Its Limit?", N.Y.L.J, May 4, 2010.
3 Joan Gralla, supra note 2.
4 Id.
5 Calendar Appearance, Part 31, Oct. 16, 2009 (Tr. at 5, 21).
6 Id. at 34.
7 Memorandum of Law in Support of Defendant's Omnibus Motion at 2.

criminal as well.

Under the proposed plea agreement (the "Agreement"), Morris would plead guilty to Count 19 of the indictment, a Martin Act class E felony against him, and forfeit the $19 million in fees that he obtained through the criminal schemes alleged in the indictment. The Agreement further provides that Morris would be permanently banned from doing business in the securities industry in New York, and barred from soliciting or receiving public investments, obtaining public employment, or entering into contracts with the state or any subdivision. As proposed, Morris faces up to 1 1/3 – 4 years of incarceration and the actual sentencing decision remains with the Court. The proposed disposition provides justice to the People and appropriately penalizes Morris, while avoiding the uncertainty and the expenditure of resources that the multi-month trial of this complex case would necessarily entail.

In addition, pursuant to the Agreement, Morris faces a state prison sentence, along with a significant financial penalty, which would represent the largest payment made by any criminal defendant in this case. Morris's forfeiture of the $19 million he obtained from his corrupt deals would ensure that he will not profit from his crimes, and the State pension fund would be made whole – an important goal of the OAG investigation generally, which has already resulted in the recovery of more than $139 million for the State pension fund and the People.

Furthermore, the Agreement provides finality and guarantees a conviction in a matter of public importance. There are no such guarantees with a state jury trial on complicated criminal charges in a complex enterprise corruption case. Indeed, while Morris faces a maximum sentence of 8 1/3-25 years incarceration if convicted on the top count after trial, given the complexities and novel theories in this case, a jury could find that he has not committed any crime and he could be acquitted on the charges against him. This would not only mean that Morris would not be convicted and not face incarceration, it would also mean that he would not have to forfeit the fees he obtained and the State pension fund would be deprived of the $19 million it stands to receive under the Agreement.

Finally, any trial in this case would involve dozens of witnesses, thousands of documents, and likely take between 4-6 months of the Court's and a jury's time – time and resources that would be saved by the proposed disposition.

In sum, any concern that the Agreement limits Morris's exposure to incarceration is outweighed by the substantial public interests served by his plea and conviction at this time prior to trial, including the forfeiture to the State pension fund of all $19 million in fees that Morris obtained through his schemes.

<u>The Forfeiture Stipulation Will Provide for Payment of $19 Million to the State Pension Fund</u>

The Agreement requires that the defendant pay $19 million by way of stipulated forfeiture, and the parties have agreed that all of these proceeds shall be distributed as restitution to the State pension fund. The stipulation will provide for the following: 1) payment of cash, liquidation of certain assets, and mechanisms to realize full value of other assets that cannot be liquidated immediately – such as the interests in certain alternative investments; and 2) the payment and transfer of interests pursuant to the forfeiture stipulation to the State pension fund prior to sentencing. Pursuant to the pending civil forfeiture action against Morris, the OAG has

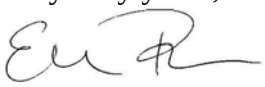
secured Morris's assets, including his home, which assets are currently valued at more than $25 million. These assets will remain restrained until Morris satisfies the full forfeiture amount. The parties and the State pension fund are in the process of evaluating the seized assets and determining the appropriate mechanism and schedule for liquidation of the assets, some of which are alternative investments that are not easily valued or liquidated. We expect to finalize the stipulation by Friday, November 19, and will convey a copy to the Court at that time.

The Agreement Substantially Reduces Morris's Risk of Flight Prior to Sentencing

The Agreement is structured such that Morris has a significant incentive to return to Court to be sentenced. First, the remaining counts of the indictment will only be dismissed once Morris is sentenced on his plea. Moreover, the OAG has restrained more than $25 million in Morris's assets, including his home, which according to the Agreement and the anticipated forfeiture stipulation will be held to secure Morris's payment of the $19 million in forfeiture, and will be subject to forfeiture if Morris fails to return to Court for sentencing or otherwise fails to comply with the forfeiture stipulation. Thus, in addition to the $1 million bail he would lose if he failed to return to court, Morris would lose *all* of the assets that the OAG has restrained, believed to be worth more than $25 million, including his home, if he does not return to be sentenced. Thus, should the Court approve the Agreement, there would be ample incentive for Morris to return to Court to be sentenced.

For the reasons set forth above, the proposed plea agreement is clearly in the interests of justice and we respectfully request that it be approved by the Court.

Very truly yours,



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