ATTORNEY GENERAL OF THE STATE OF NEW YORK

IN THE MATTER OF THE MARKSTONE GROUP	:	Investigation No. 10-012

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. This Assurance of Discontinuance ("Assurance") contains the findings of the Attorney General's Investigation and the relief agreed to by the Attorney General and Markstone Investment Management Ltd. and Markstone Capital Group, L.P. (jointly, "Markstone") with regard to Markstone Capital Group LLC, Markstone Capital Group, L.P., Markstone Investment Management, LLC, Markstone Investment Management, Ltd., and Markstone Capital Partners, L.P (collectively, "Markstone Group").

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, finders, lobbyists, and other intermediaries (herein, "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 powers 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, Markstone 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, Markstone disapproves of such practices, recognizes the need for reform, and embraces the Attorney General's Reform Code of Conduct attached to this Assurance and incorporated by reference herein; and

WHEREAS, Markstone has fully cooperated with the Attorney General's investigation.

I. Markstone

1. Markstone Capital Group LLC is a private equity firm established to pursue investment opportunities in "old economy" companies[1] in Israel. Markstone Capital Group LLC has offices in Los Angeles, California and Tel Aviv, Israel. Markstone

[1] The term "old economy" describes traditional blue chip industrial companies, such as energy, steel and automobile manufacturers, as opposed to "new economy" companies in technology and related sectors.

Capital Partners, L.P. (the "Markstone Fund") is a private equity fund that focuses on corporate buyout investments in privately held companies doing business in Israel.

2. The founders of the Markstone Group are Elliott Broidy,[2] a resident of Los Angeles, California, Amir Kess and Ron Lubash, residents of Tel Aviv, Israel. Broidy had responsibility for securing investors in the United States for the Markstone Fund and Kess and Lubash had responsibility for managing the investments in Israel. Markstone Investment Management, Ltd. ("Ltd."), was established to be the management company for the Markstone Funds. Broidy was the sole director and controlling shareholder of Ltd., had responsibility for keeping its books and records and paying its expenses, and conducted those activities from Markstone offices in Los Angeles, California. Broidy resigned from any role in management of any of the members of the Markstone Group in December, 2009.

II. THE NEW YORK OFFICE OF THE STATE COMPTROLLER

3. 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 $122 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 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.

4. The Comptroller is a statewide elected official and is the State's chief fiscal officer. The Comptroller is the sole trustee of the CRF, but typically appoints a Chief

[2] Elliott Broidy is not a party to this agreement.

Investment Officer and other investment staff members who are vested with authority to make investment decisions. The Comptroller, the Chief Investment Officer and CRF investment staff members owe fiduciary duties and other duties to the CRF and its members and beneficiaries.

5. The primary functions of the OSC are to perform audits of state government operations and to manage the CRF. The CRF invests in specific types of assets as set forth by statute. The statute's basket provision allows a percentage of the CRF portfolio's investments to be held in assets not otherwise specifically delineated in the statute. From 2003 through 2006, the CRF made investments that fell into this "basket" through its Division of Alternative Investments. This division was primarily comprised of staff members or investment officers who reported through the Director of Alternative Investments to the Chief Investment Officer, who reported to the Comptroller with respect to investment decisions.

6. During the administration of Alan Hevesi, who was Comptroller from January 2003 through December 2006 ("Hevesi"), the CRF invested the majority of its alternative investments portfolio in private equity funds. Beginning in approximately 2005, the CRF also began to invest in hedge funds. The CRF generally invested in private equity funds as one of various limited partners. In these investments, a separate investment manager generally served as the general partner which managed the day-to-day investment. The alternative investment portfolio also included investments in fund-of-funds, which are investments in a portfolio of private equity or hedge funds. The CRF invested as a limited partner in fund-of-funds. In other words, the CRF

would place a lump sum with a fund and that fund would essentially manage the investment of these monies by investing in a portfolio of other sub-funds.

7. The CRF was a large and desirable source of investments funds. Gaining access to and investments from the CRF was a competitive process, and frequently the investment manager who served as the general partner of the funds retained third parties known as "placement agents" or "finders" (hereinafter "placement agents") to introduce and market them to CRF. If an investment manager paid a fee to the placement agent in connection with an investment made by the CRF, the CRF required that the investment manager make a written disclosure of the fee and the identity of the placement agent to the Chief Investment Officer or to the manager of the fund-of-funds.

8. Once the CRF was introduced to and interested in the fund, the fund was referred to one of CRF's outside consultants for due diligence. At the same time, a CRF investment officer was assigned to review and analyze the transaction. If the outside consultant found the transaction suitable, the investment officer then determined whether to recommend the investment to the Director of Alternative Investments.

9. If the investment officer recommended a proposed private equity investment, and the Director of Alternative Investments concurred, then the recommendation was forwarded to the Chief Investment Officer for approval. If the Chief Investment Officer approved, he recommended the investment to the Comptroller, whose approval was required before the CRF would make a direct investment. There was a similar process for hedge fund investments, which required the recommendation of the senior investment officer to the Chief Investment Officer and the Chief Investment Officer's

approval and recommendation to the Comptroller. Given this process, the Chief Investment Officer could not make an investment unless the proposed investment had been vetted by an outside consultant and recommended by multiple levels of investment staff, including the Director of Alternative Investments, the Chief Investment Officer and the Comptroller.

10. Placement agents and other third parties who are engaged in the business of effecting securities transactions and who receive a commission or compensation in connection with that transaction are required to be licensed and affiliated with broker-dealers regulated by an entity now known as the Financial Industry Regulatory Authority ("FINRA"). To obtain such licenses, the agents are required to pass the "Series 7" or equivalent examination administered by FINRA.

III. THE MORRIS/LOGLISCI INDICTMENT

11. 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 Hevesi, and David Loglisci, the CRF's Director of Alternative Investments and then Chief Investment Officer. 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. The Indictment alleges the following facts in relevant part as set forth in this Part III of the Assurance.

12. 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.

13. In November 2002, Hevesi was elected to serve as Comptroller, and took office on January 1, 2003. Prior to and after the 2002 election, Morris served as Hevesi's paid chief political consultant and advisor. Upon Hevesi taking office in 2003, Morris began to exercise control over certain aspects of the CRF, including the alternative investment portfolio.

14. Morris asserted control over CRF business by recommending, approving, securing or blocking alternative investment transactions. Morris also influenced the CRF to invest for the first time in hedge funds, an asset class that was perceived to be riskier than private equity funds, so that Morris and his associates could reap fees from hedge fund transactions involving the CRF.

15. Morris participated in discussions to remove and promote certain executive staff at the CRF. In or about April 2004, for example, Morris and certain other high-ranking OSC officials determined that the original Chief Investment Officer of the CRF was not sufficiently accommodating to Morris and his associates. Morris participated in the decision to remove the original Chief Investment Officer and promote Loglisci to that position.

16. Beginning in 2003, Morris also began to market himself as a placement agent to private equity and hedge funds seeking to do business with the CRF. At the same time

that Morris was profiting through investment transactions involving the CRF, Morris participated with Loglisci in making decisions about investments. In particular, during the Hevesi administration, Morris occupied three conflicting roles at the CRF although he had no official position there: (1) he advised and helped manage the CRF's alternative investments, acting as a de facto Chief Investment Officer; (2) he brokered deals between the CRF and politically-connected outside investment funds offering investment management services, earning millions in undisclosed fees as a placement agent; and (3) he had a commercial, personal and political relationship as the Comptroller's chief political strategist and fundraiser.

17. Through his role at the CRF, Morris became a de facto and functional fiduciary to the CRF and its members and beneficiaries, and owed a fiduciary duty to act in the best interests of the CRF and its members and beneficiaries. However, Morris breached this duty and used his influence over the CRF investment process to enrich himself and other associates. Morris's multiple roles generated conflicts of interest, which Loglisci had knowledge of and failed to disclose.

18. Loglisci ceded decision-making authority to Morris regarding particular investments and investment strategies to be pursued and approved by the CRF. During this time, Loglisci was also aware that Morris had an ongoing relationship with the Comptroller. Loglisci was a fiduciary to the CRF and a public officer with duties pursuant to the Public Officers Law and therefore had a duty to disclose his own and others' actual and potential conflicts of interests. Loglisci failed to disclose Morris's role to members and beneficiaries of the CRF through the CRF's annual report or otherwise. Loglisci and Morris concealed their corrupt arrangement and Morris's role

in investment transactions from the investment staff, ethics officers, and lawyers at CRF. Additionally, Loglisci failed to disclose his own conflicts of interest involving the financing and distribution of his brother's film, "Chooch," by Morris and other persons receiving an investment commitment from the CRF.

19. In sum, from 2003 through 2006, through Morris's and Loglisci's actions as described above, the process of selecting investments at the CRF – investments of billions of dollars – was skewed and corrupted to favor political associates, family and friends of Morris and Loglisci, and other officials in the Office of the State Comptroller. Morris and Loglisci corrupted the alternative investment selection process by making investment decisions based on the goal of rewarding Morris and his associates, rather than based exclusively on the best interests of the CRF and its members and beneficiaries. Morris and Loglisci favored deals for which Morris and his associates acted as placement agents, or had other financial interests, which interests were often concealed from investment staff and others. The scheme was manifested in several ways:

a. In some instances, Morris and Loglisci blocked proposed CRF investments where the private equity fund or hedge fund would not pay them or their associates.

b. In yet others, Morris inserted his associates as placement agents, who then shared fees with Morris and on others, Morris, Loglisci and their associates inserted placement agents into proposed transactions as a reward for past political favors.

c. On one transaction, Morris was a principal of an investment in which Morris served as placement agent.

d. On some transactions, Morris was the placement agent through a broker/dealer, Searle & Company ("Searle") or another entity controlled by Morris and Morris shared fees with an associate. On certain other transactions, the structure was reversed, so that an associate of Morris was

the placement agent, who shared fees with Morris. These fee sharing arrangements were often not disclosed to fund managers or to the CRF investment staff, other than Loglisci.

20. Morris concealed his conflicting roles as political consultant, CRF gatekeeper and CRF placement agent from the CRF alternative investment staff and others. Morris also concealed financial relationships he had with Loglisci and another OSC official. At times, Morris concealed his role as CRF investment gatekeeper from funds that hired him as a placement agent. In some instances, Morris obtained placement agreements and fees for himself and others from certain fund managers through false and misleading representations and material omissions, including claims that Searle was the official placement agent for the CRF.

21. Loglisci helped to conceal his and Morris's scheme by maintaining exclusive custody of letters to the CRF that disclosed the use of placement agents and fees paid relating to certain CRF investment transactions.

22. As a result of Morris and Loglisci's scheme, Morris and his associates earned fees on more than five billion dollars in commitments to more than twenty private equity funds, hedge funds, and fund-of-funds during the Hevesi administration. These deals generated tens of millions of dollars in fees to Morris and his associates.

IV. FINDINGS AS TO MARKSTONE

A Markstone Partner Confers Benefits on OSC Officials, their Friends and Family

23. Beginning as early as November 2002, Elliott Broidy conferred benefits totaling nearly $1,000,000.00 on OSC officials and their friends and family members, with the intent to influence the OSC officials and to thereby induce, and then to increase, the CRF's investment in the Markstone Fund. Broidy conferred these benefits upon the agreement and understanding that OSC officials would exercise their judgment and

discretion in favor of the Markstone Fund and in violation of their fiduciary and other duties as public officials. In addition, Broidy concealed the fact and circumstances of these payments from investment staff and others at the OSC who were not complicit with Broidy.

24. Between on or about June 16, 2003 and August 18, 2004, Broidy made contributions totaling $300,000.00 to a movie "Chooch," in which the CRF's Chief Investment Officer's brother had a financial interest. In order to conceal his involvement in financing the movie, Broidy made the contributions through a third-party nominee whom he reimbursed.

25. Beginning in or about January 2003 and continuing for a period of more than two years, Broidy also paid or caused to be paid more than $380,000.00 in sham consulting fees to a family member of a senior OSC official. Broidy caused the Markstone Fund to fail to comply with its obligation to disclose these as payments in connection with the CRF investment in the Markstone Fund.

26. Additionally, between in or about October 2003 and in or about October 2005, Broidy paid more than $90,000.00 in rent, living expenses and hospital bills for the friend of a high-ranking OSC official, and made $44,000.00 in sham loan payments to a relative of that friend.

27. Furthermore, between in or about April 2003 and in or about June 2006, Broidy paid at least $75,000.00 in travel expenses for trips to Israel by OSC officials and relatives of a high-ranking OSC official, including payments for first-class airfare, luxury hotel suites, a car and driver, a helicopter tour and security detail. In order to

conceal these travel payments, Broidy financed some of the expenses through charitable organizations and thereby caused false invoices to be submitted to the OSC.

CRF Invests in Markstone and Twice Increases its Capital Commitment

28. On or about June 16, 2003, the CRF executed an initial subscription agreement for an investment in the Markstone Fund. Through this subscription agreement, the CRF made a capital commitment equal to the lesser of $200 million or 40% of the aggregate capital invested in the Markstone Fund. The Markstone Fund had its initial closing on or around February 2, 2004, at which time the CRF's $200 million commitment was formalized.

29. Subsequently, on or about July 1, 2005, the CRF increased its capital commitment to the Markstone Fund from $200 million to $225 million. On or about September 30, 2005, the CRF again increased its capital commitment to the Markstone Fund, from $225 million to $250 million.

30. To date, the CRF has paid Markstone in excess of $18 million in management fees relating to this investment.

Broidy Pleads Guilty to a Felony

31. On or about December 1, 2009, Broidy resigned from the management of the Markstone Group. On December 3, 2009, Elliott Broidy pled guilty to Rewarding Official Misconduct in violation of New York Penal Law §200.20, a class E felony, pursuant to a plea and cooperation agreement with the Attorney General.

AGREEMENT

WHEREAS, Markstone is potentially legally responsible for the conduct of Elliott Broidy set forth above and it wishes to resolve the Investigation and is willing to abide by the terms of this Agreement set forth below;

WHEREAS, Markstone 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 the Markstone Group;[3]

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

32. The Attorney General and Markstone hereby enter into the attached Public Pension Fund Reform Code of Conduct, which is hereby incorporated by reference as if fully set forth herein.

II. PAYMENT

33. Upon the signing of this Assurance, Markstone agrees to turn over EIGHTEEN MILLION ($18,000,000.00) DOLLARS to the State of New York, the value of $18 million of which shall be restitution to be returned to the CRF for the benefit of its

[3] This Assurance does not supersede, affect, abridge or modify in any way any existing agreements between the Attorney General and Elliott Broidy.

members and shall not be used for any other purpose. This payment shall be made to the New York State Office of the Attorney General in the following manner:

a. Markstone shall make the following quarterly payments totaling $6,000,000.00: $1,500,000.00 by April 1, 2010, $1,500,000.00 by July 1, 2010, $1,500,000.00 by October 1, 2010, and $1,500,000.00 by December 31, 2010.

b. Markstone shall pay an additional $3,500,000.00 by December 31, 2011.

c. Markstone shall pay an additional $7,000,000.00 by December 31, 2012.

d. Markstone shall pay an additional $1,500,000.00 by June 30, 2013.

e. The payments shall be made through wire transfers according to instructions to be provided to Markstone by the Attorney General. $18 million of this payment is for the benefit of and shall be deemed restitution to the New York State Common Retirement Fund.

34. Markstone agrees that it 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 33 above. This does not apply to claims against members or partners of any member of the Markstone Group.

III. GENERAL PROVISIONS

35. Markstone admits the jurisdiction of the Attorney General. The Markstone Group are committed to complying with relevant laws to include the Martin Act, General Business Law § 349, and Executive Law § 63(12).

36. 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 the Markstone Group.

37. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by Markstone or any of its affiliates has occurred, Markstone 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.

38. If Markstone defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to Markstone. Markstone 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, Markstone 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 the Markstone Group, or from using in any way any statements, documents or other materials produced or provided by the Markstone Group 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.

39. Except in an action by the Attorney General to enforce the obligations of Markstone 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 the Markstone Group 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.

40. The Markstone Group has fully and promptly cooperated in the Investigation, shall continue to do so, and Markstone shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners and employees of the Markstone Group (and any of the Markstone Group's parent companies, subsidiaries or affiliates) 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 the Assurance. 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 the Markstone Group (or the Markstone Group's parent companies, subsidiaries or affiliates) 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 the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of the Markstone Group (and of the Markstone Group's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons is requested by the Attorney General and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees answer any and all inquiries that may be put by the Attorney General to any of the them 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 their possession, custody or control (or the possession, custody or control of the Markstone Group's parent companies, subsidiaries or affiliates) 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.

41. In the event that any member of the Markstone Group fails to comply with paragraph 40 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to other available remedies.

42. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General and his staff by the Markstone Group, their counsel, and the Attorney General's Investigation. To the extent that representations made by the Markstone Group or their counsel are later

found to be materially incomplete or inaccurate, this Assurance is voidable by the Attorney General in his sole discretion.

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

44. 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 Markstone:

William W. Taylor III
Zuckerman Spaeder LLP
1800 M Street, NW
Suite 1000
Washington, DC 20036-5807

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

45. 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.

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

47. Markstone 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 the Markstone Group'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. This paragraph applies to all parent companies, affiliates, and subsidiaries of the Markstone Group.

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

49. This Assurance constitutes the entire agreement between the Attorney General and Markstone, its employees, partners, and beneficial owners, other than Elliott Broidy, 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.

50. 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.

51. 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.

52. Upon execution by the parties to this Assurance, the Attorney General agrees to suspend, pursuant to Executive Law § 63(15), this Investigation as and against the Markstone Group, its employees, partners, and beneficial owners, other than Elliott Broidy, solely with respect to its marketing of investments to public pension funds in New York State.

53. Any payments and all correspondence related to this Assurance must reference Investigation No. 10-012.

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

120 Broadway
25th Floor
New York, New York 10271
(212) 416-6199

Dated: ~~January~~ February 26, 2010

MARKSTONE INVESTMENT MANAGEMENT, LTD.

By: Amir Kess

Dated: January 28, 2010

MARKSTONE CAPITAL GROUP, L.P.

By: Amir Kess

Dated: January 28, 2010