

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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:  
IN THE MATTER OF :  
DARIUS ANDERSON :  
PLATINUM ADVISORS LLC :  
:  
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Investigation  
No. 2009-153

**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 Darius Anderson (“Anderson”) and Platinum Advisors LLC (“Platinum”).

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, Anderson and Platinum acknowledge 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, Anderson and Platinum embrace the Attorney General's Reform Code of Conduct attached to this Assurance and incorporated by reference herein; and

WHEREAS, Anderson and Platinum have fully cooperated with the Attorney General's investigation.

**I. DARIUS ANDERSON AND PLATINUM ADVISORS LLC**

1. Anderson is the founder and CEO of Platinum Advisors LLC, a leading government relations firm with offices in California and Washington, D.C. Both Anderson and Platinum are registered under the California Lobbying Law. In addition

to Platinum, Anderson is the founder and co-owner of Gold Coast Capital LLC and Gold Bridge Capital LLC. Gold Bridge Capital LLC was a registered broker-dealer beginning in October of 2006. Prior to founding Platinum, Anderson worked as the chief of staff of a prominent Los Angeles-based investment 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 \$116.5 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, 2009, the NYC Pension Funds had combined assets of \$77.1 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 administration. 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.

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 ANDERSON AND PLATINUM**

##### **CRF Investment**

11. In or about March 2002, a founding principal (the “Principal”) of Ares Management, LLC (“Ares”) retained Platinum as part of a strategy to raise his profile in the political world in California. In or about August 2002, the Principal approached Anderson about expanding Platinum’s representation to include the provision of placement agent services for Ares’ first private equity fund, the Ares Corporate Opportunities Fund (“ACOF”). At no time was Platinum a registered broker-dealer. Anderson did not become a licensed agent until in or about October 2006, at which time he affiliated with Gold Bridge Capital LLC, a registered broker-dealer formed by Anderson for the purpose of marketing securities.

12. At the time that Ares approached Platinum to expand its representation, Ares had already engaged an institutional placement agent (the “Institutional Agent”) for the purposes of marketing ACOF. However, Ares sought to hire additional agents to supplement the Institutional Agent’s representation.

13. Anderson explained to the Principal that Platinum could be helpful to Ares in placing ACOF with California funds (e.g., CalPERS and CalSTRS), but recommended

that Ares also bring on Wetherly Capital Group (“Wetherly”), a California-based placement agent, that had more extensive contacts at pension funds in California and elsewhere.

14. In or about August 2002, Ares and Platinum reduced their agreement to writing. Their “consulting agreement” reflected a limited number of institutional investors to whom Platinum would market ACOF, including New York City’s NYCERS fund. A February 2003 amendment to their agreement added the CRF as a targeted investor. According to its agreement with Ares, Platinum was to receive a fee equal to 1.5% of any capital committed by the CRF to ACOF.

15. With Ares’ knowledge and consent, in or about February of 2003, Platinum entered into a sub-finder arrangement with Wetherly to market ACOF to an enumerated list of targeted investors. With respect to CalPERS and CalSTRS, Platinum and Wetherly agreed to a 50-50 split on any fees generated by an ACOF placement. For all other targeted investors, including the CRF and the New York City funds, Platinum agreed to retain 15% of fees, while Wetherly would be paid 85% of fees.

16. The Investigation revealed that Wetherly subsequently entered into an agreement with Hank Morris to split Wetherly’s share of fees on the CRF’s investment in ACOF. Specifically, Wetherly agreed to pay Morris 40% of fees received by it in connection with any CRF investment in ACOF. Morris agreed to use his influence at the CRF to help Ares receive an investment. Morris’s agreement with Wetherly was not reduced to writing, and Morris was not a licensed placement agent at the time that he entered



into this arrangement. Wetherly did not inform Anderson or Platinum of its arrangement with Morris.

17. Following the CRF's \$50 million investment in ACOF, in accordance with its agreements with Platinum and Wetherly, Ares paid Platinum \$112,500 and Ares paid Wetherly \$637,500, totaling \$750,000 or approximately 1.5% of CRF's \$50 million commitment. Ares paid the Institutional Agent \$250,000 on the CRF's commitment. As agreed upon by Morris and Wetherly, and without Anderson's or Platinum's knowledge, Wetherly paid 40% of its fees (an amount equal to \$225,000) to Morris indirectly through Julio Ramirez, Jr., an unlicensed agent working at Wetherly. The payments to Morris were not disclosed in the post-closing disclosure letter to the CRF as required in the CRF's "side letter" agreement.

### **NYC Investments**

18. In or about March 2004, NYC Fire Department Pension Fund, NYC Police Pension Fund, NYCERS, and Teachers' Retirement System of the City of New York (together, the "NYC Funds") committed a total of \$100 million to ACOF.

19. In total, Platinum received \$225,000 from Ares associated with the NYC Funds' investments. Additionally, Wetherly received \$1,010,000 from Ares on these placements, while a third placement firm received \$225,000 from Ares.

### **CalPERS Investment**

20. On or about March 7, 2003, Platinum entered into a three-way "Consulting Agreement" with Levine Leichtman Capital Partners ("LLCP") and Manatt Jones Global Strategies, the consulting arm of Manatt Phelps and Phillips, LLP. Pursuant to that agreement, Platinum introduced LLCP's Fund III to the California Public

Employees' Retirement System ("CalPERS"). In or about December 2003, CalPERS committed approximately \$25 million to LLC Fund III. Subsequently, pursuant to the Consulting Agreement, LLC paid Platinum \$187,500, and LLC paid Manatt Phelps and Phillips \$187,500. Platinum in turn paid a percentage of its fee to Wetherly, as Wetherly had referred the representation to Platinum.

### **AGREEMENT**

WHEREAS, ANDERSON and PLATINUM wish to resolve the Investigation and are willing to abide by the terms of this Agreement set forth below;

WHEREAS, ANDERSON and PLATINUM do 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 ANDERSON and PLATINUM;

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**

21. The Attorney General and ANDERSON, in his individual capacity and on behalf of PLATINUM, hereby enter into the attached Public Pension Fund Reform Code of Conduct, which is hereby incorporated by reference as if fully set forth herein.

ANDERSON and PLATINUM agree to fully abide by the terms of the Code of Conduct as it pertains to them.

## **II. LICENSING**

22. ANDERSON 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. PLATINUM agrees henceforth, prior to engaging in any business effecting securities transactions, that it will register as a broker-dealer regulated by FINRA and will file any broker-dealer registrations statements with the Attorney General as required under the Martin Act.

## **III. PAYMENTS DUE FROM ARES**

23. ANDERSON and PLATINUM agree to forgo any future payments due to them in connection with any CRF or NYC Fund investment in any Ares-managed fund.

## **IV. PAYMENT**

24. Within thirty days of signing of this Assurance, ANDERSON, in his individual capacity, and on behalf of PLATINUM, will turn over FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS to the Office of the Attorney General of the State of New York in the form of a certified or bank check made out to "State of New York" and mailed or otherwise delivered to: Office of the Attorney General of the State of New York, 120 Broadway, 25th Floor, New York, New York 10271, Attn: Linda Lacewell, Special Counsel.

25. ANDERSON and PLATINUM agree that they 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 24 above.

V. **GENERAL PROVISIONS**

26. ANDERSON and PLATINUM admit the jurisdiction of the Attorney General. ANDERSON and PLATINUM are committed to complying with relevant laws to include the Martin Act, General Business Law § 349, and Executive Law § 63(12).

27. 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 ANDERSON or PLATINUM.

28. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by ANDERSON or PLATINUM has occurred, ANDERSON and PLATINUM 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.

29. If ANDERSON and PLATINUM default on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to ANDERSON and PLATINUM. ANDERSON and PLATINUM agree 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, ANDERSON and PLATINUM expressly agree and acknowledge 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 ANDERSON and PLATINUM, or from using in any way any statements, documents or other materials produced or provided by ANDERSON and PLATINUM 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.

30. Except in an action by the Attorney General to enforce the obligations of ANDERSON and PLATINUM 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 ANDERSON and PLATINUM 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.

31. ANDERSON and PLATINUM have fully and promptly cooperated in the Investigation and shall continue to do so. 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 ANDERSON and PLATINUM 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 ANDERSON attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of ANDERSON is requested by the Attorney General and having ANDERSON 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.

32. In the event ANDERSON and PLATINUM fail to comply with paragraph 31 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to other available remedies.

33. 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 ANDERSON, PLATINUM, their counsel, and the Attorney General’s Investigation. To the extent that representations made by ANDERSON, PLATINUM, or their counsel are later found to be materially incomplete or inaccurate, this Assurance is voidable by the Attorney General in his sole discretion.

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

35. 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 ANDERSON or PLATINUM:

Cristina C. Arguedas  
803 Hearst Avenue  
Berkeley, California 94710

If to the Attorney General:

Office of the Attorney General of the State of New York  
120 Broadway, 25<sup>th</sup> Floor  
New York, New York 10271  
Attn: Linda Lacewell

36. 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.

37. ANDERSON and PLATINUM consent to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

38. ANDERSON and PLATINUM agree 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 ANDERSON's or PLATINUM'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.

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

40. This Assurance constitutes the entire agreement between the Attorney General and ANDERSON and PLATINUM 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.

41. 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.

42. 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.

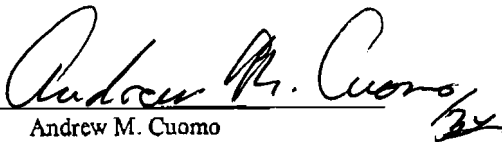
43. Upon execution by the parties to this Assurance, the Attorney General agrees to suspend, pursuant to Executive Law § 63(15), this Investigation as and against ANDERSON and PLATINUM solely with respect to their marketing of investments to public pension funds in New York State.



44. Any payments and all correspondence related to this Assurance must reference  
Investigation No. 09-153

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

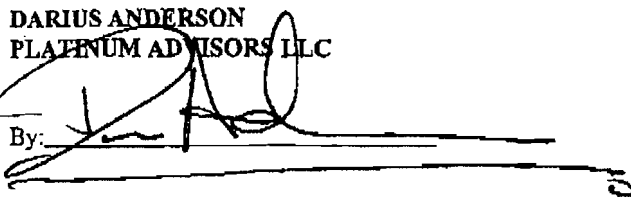
**ANDREW M. CUOMO**  
Attorney General of the State of New York

By:   
Andrew M. Cuomo

120 Broadway  
25<sup>th</sup> Floor  
New York, New York 10271  
(212) 416-6199

Dated: April 14, 2010

**DARIUS ANDERSON**  
PLATINUM ADVISORS LLC

By: 

Dated: April 13, 2010