

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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IN THE MATTER OF :
GLOBAL STRATEGY GROUP :
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Investigation
No. 09-161

**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 Global Strategy Group (“GSG”).

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

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

I. GSG

1. GSG is a public affairs and research firm with offices located in New York and elsewhere. In or about 2002, GSG partnered with the Mirram Group ("Mirram"), a consulting group with offices in New York, to engage in the business of, among other things, lobbying. In or about 2003, GSG and Mirram formed Mirram Global LLC ("Mirram Global"), an entity 50 percent owned by each of GSG and Mirram. In or about the end of 2006, GSG and Mirram ceased their joint lobbying efforts.

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. UNLICENSED AGENTS

8. 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 GSG

Intermedia

9. In or about late 2004 or early 2005, Intermedia Advisors, LLC (“Intermedia”), a private equity investment firm focused on leveraged buyout and growth capital investments in the media sector, began soliciting investments in its latest private equity fund, Intermedia Partners VII, L.P. (“Intermedia VII”). Around this time, an executive and founding partner of GSG (the “GSG Executive”) introduced a placement agent (the “Broker”), to a managing partner at Intermedia (the “Intermedia Partner”), with whom the GSG Executive had a preexisting consulting relationship through Mirram Global. The GSG Executive understood that the Broker proposed to help Intermedia market Intermedia VII to public pension funds, including the CRF and the NYC Pension Funds.

10. In May 2005, Intermedia entered into a consulting agreement with the Broker and Shelbourne Securities, LLC (“Shelbourne”), a broker-dealer with which the Broker was affiliated. Intermedia agreed to pay Shelbourne a fee of \$550,000 for each “Investor Prospect” that became an investor in Intermedia VII. The CRF and the NYC Pension

Funds were listed as “Investor Prospects” in the consulting agreement. Intermedia subsequently agreed to pay additional placement fees directly to the Broker based on the Broker’s efforts to obtain investments in Intermedia VII from other public pension funds.

11. While Intermedia negotiated its fee arrangement with the Broker, the GSG Executive and Intermedia began negotiating a written agreement that addressed, among other things, the fee Intermedia would pay Mirram Global as compensation for the services Mirram Global would provide to Intermedia. In June 2005, shortly after Intermedia entered the consulting agreement with Shelbourne and the Broker, Intermedia signed an agreement with Portnova LLC (the “Portnova Agreement”), a Mirram Global entity. The agreement entitled Portnova to up to \$1.1 million in fees based on the Broker’s success in obtaining investments in Intermedia VII from public pension funds, including the CRF and the NYC Pension Funds.

12. Throughout the fundraising process for Intermedia VII, the GSG Executive facilitated the Broker’s relationship with Intermedia; he reported on the Broker’s progress to Intermedia, and helped coordinate the Broker’s marketing efforts vis-à-vis the other placement agents Intermedia engaged to market Intermedia VII.

13. In December 2005, Intermedia VII held its first closing. It received investments from several public pension funds, including a \$50 million investment from the CRF and a total of \$65 million in investments from the NYC Pension Funds.

14. Intermedia ultimately paid the Broker and Shelbourne over \$1 million in placement fees in connection with public pension fund investments in Intermedia VII.

15. HL Capital, a private company of which the Intermedia Partner was president, paid Mirram Global a total of \$883,333, in three installments, from February 2006 to July 2006. Though HL Capital did not make these payments pursuant to a written agreement, the Intermedia Partner and the GSG Executive understood that the payments were compensation for the Broker's success in obtaining investments in Intermedia VII. GSG and the Mirram Group split (\$441,666 each) the HL Capital payments to Mirram Global.

16. Intermedia did not make any payments pursuant to the Portnova Agreement.

17. Calendar records for April 5, 2007, reflect that the GSG Executive, the Intermedia Partner and a Mirram executive met with New York State Comptroller Thomas DiNapoli at his office at 633 Third Avenue.

18. On April 18, 2007, the CRF approved an additional \$15 million capital commitment to Intermedia VII.

Clayton, Dubilier & Rice

19. In or about 2005, the Intermedia Partner suggested that the GSG Executive introduce the Broker to Clayton, Dubilier & Rice (CD&R), a private equity firm that was in the process of raising capital for CD&R Fund VII, LP ("CD&R VII"). The GSG Executive did not have a relationship with anyone at CD&R, so the Intermedia Partner provided him with the contact information for a partner at CD&R ("the CD&R Partner").

20. At the Intermedia Partner's suggestion, the GSG Executive set up and participated in a conference call with the CD&R Partner and the Broker. The Broker explained to

the CD&R Partner that he could help obtain investments in CD&R VII from the NYC Pension Funds. CD&R subsequently hired the Broker as a placement agent.

21. The Broker agreed to pay GSG one third of any placement fees he received in connection with CD&R VII as compensation for the introduction to CD&R. The GSG Executive did not have any further involvement with CD&R beyond introducing the Broker to the CD&R Partner.

22. In June 2005, GSG created an entity called Levo, LLC (“Levo”). GSG planned to develop a new line of business introducing placement agents to private equity firms, and planned to use the Levo entity for this enterprise. Accordingly, GSG caused Levo to enter into a written agreement with the Broker and Shelbourne (the “Levo Agreement”) pursuant to which Shelbourne and the Broker jointly agreed to pay Levo one third of the fees received from CD&R.

23. The NYC Pension Funds ultimately invested a total of \$100 million in CD&R VII. The Broker received over \$1 million in placement fees from CD&R as a result of these investments.

24. From May 2006 to April 2007, the Broker paid Levo a total of \$450,000 pursuant to the Levo Agreement. These funds passed directly from Levo to GSG’s general accounts.

25. The GSG Executive has never held a securities license and has never been affiliated with a broker-dealer. GSG is not a broker-dealer and has never held a securities license.

AGREEMENT

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

WHEREAS, GSG 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 GSG;

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 Attorney General and GSG, on behalf of itself and its members, officers and employees, as follows:

I. CODE OF CONDUCT

26. GSG agrees to fully abide by the terms of the attached Public Pension Fund Reform Code of Conduct as those terms pertain to GSG.

II. LICENSING

27. GSG agrees on behalf of itself and its members, officers and employees that henceforth, prior to engaging in any business effecting securities transactions, it 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.

IV. PAYMENT

28. GSG shall make a payment of TWO MILLION (\$2,000,000.00) 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. GSG will make this two million dollar payment in six installments over three years as follows: Within 180 days of signing this Assurance, GSG shall make a payment of \$200,000; within 180 days of the first payment, GSG shall make a second payment of \$200,000; within 180 days of the second payment, GSG shall make a third payment of \$300,000; within 180 days of the third payment, GSG shall make a fourth payment of \$300,000; within 180 days of the fourth payment, GSG shall make a fifth payment of \$500,000; and within 180 days of the fifth payment, GSG shall make a final payment of \$500,000.

29. GSG 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 28 above.

V. GENERAL PROVISIONS

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

31. 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 GSG.

32. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by GSG has occurred, GSG 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.

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

34. Except in an action by the Attorney General to enforce the obligations of GSG 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 GSG 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.

35. GSG has 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 GSG 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 GSG attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of GSG is requested by the Attorney General and having GSG answer any and all inquiries that may be put by the Attorney General to it 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.

36. In the event GSG fails to comply with paragraph 35 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to other available remedies.

37. 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 GSG, its counsel, and the Attorney General's Investigation. To the extent that representations made by GSG or its counsel are later found to be materially incomplete or inaccurate, this Assurance is voidable by the Attorney General in his sole discretion.

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

39. 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 GSG:

Matthew L. Levine
Fish & Richardson P.C.
601 Lexington Avenue - 52nd Fl.
New York, NY 10022-4611

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

40. 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.

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

42. GSG 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 GSG'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.

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

44. This Assurance constitutes the entire agreement between the Attorney General and GSG 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.

45. 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.

46. 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.

47. Upon execution by the parties to this Assurance, the Attorney General agrees to terminate, pursuant to Executive Law § 63(15), this Investigation as and against GSG, its members, officers, employees and subsidiaries solely with respect to their marketing

of investments to public pension funds, and with respect to their dealings with the private equity funds and the events described in section IV of this Assurance. This Assurance, including this paragraph, does not apply to the Mirram Group.

48. Any payments and all correspondence related to this Assurance must reference Investigation No. 09-161.

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

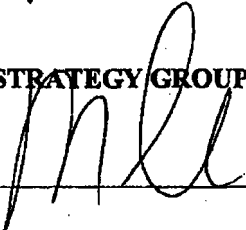
~~ANDREW M. CUOMO~~ **STEVEN M. COHEN**
for Attorney General of the State of New York

By: 
Steven Cohen

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

Dated: April 14 2010

GLOBAL STRATEGY GROUP

By: 

Dated: April 14 2010