

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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STATE OF NEW YORK,

Plaintiff,

Index No.: 403728/2003

-against-

PILGRIM BAXTER & ASSOCIATES, LTD.,
GARY L. PILGRIM and HAROLD J. BAXTER,

Defendants.

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

WHEREAS, Eliot Spitzer, Attorney General of the State of New York, brought the above-captioned action (the “Action”) in the name of the State of New York pursuant to Civil Practice Law and Rules § 1301, Article 23-A of the General Business Law (the “Martin Act”), section 349 of the General Business Law, and Executive Law § 63(12), for a judgment and order permanently enjoining defendants from engaging in fraudulent activities and breaches of their fiduciary obligations in connection with the purchase and sale of securities and awarding plaintiff damages, restitution, disgorgement of profits, disgorgement of management fees, fines, penalties and other just and proper relief.

WHEREAS, the complaint dated November 20, 2003 (the “Complaint”) in the Action alleges, among other things, that, in violation of the Martin Act, section 349 of the General Business Law, and Executive Law § 63(12):

- (a) the defendants allowed certain hedge funds and others to conduct “market

timing” transactions in the PBHG family of mutual funds in contravention of the express restrictions of the applicable prospectuses and in breach of defendants’ fiduciary obligations to fund shareholders;

(b) the entities permitted to “time” the PBHG funds included (i) a hedge fund in which defendant Gary L. Pilgrim, a founder and former senior executive of defendant Pilgrim Baxter & Associates, Ltd. (“PBA”) and the PBHG funds, had a substantial interest, and (ii) the clients of a New York-based brokerage firm owned by a close friend of defendant Harold J. Baxter, another founder and former senior executive of PBA and the PBHG funds;

(c) the defendants disclosed to hedge funds the portfolio holdings of certain PBHG funds to facilitate the hedge funds’ “market timing” strategies in PBHG funds; and

(d) these “market timing” transactions caused substantial dilution and other harm to the long-term shareholders of the PBHG funds.

WHEREAS, defendant PBA has advised the Attorney General of its desire and agreement to resolve the Action.

WHEREAS, the Attorney General finds the sanctions and agreements contained in this Assurance of Discontinuance (the “Assurance”) appropriate and in the public interest.

WHEREAS, the Attorney General will continue to prosecute the Action against the individual defendants with PBA’s cooperation as provided herein.

NOW, THEREFORE, PBA, without admitting or denying the allegations of the Complaint, and the Attorney General hereby enter into this Assurance, pursuant to Executive Law § 63(15), and agree as follows:

I. Affirmative Relief

A. Disgorgement and Civil Penalty

1. PBA shall pay \$40,000,000 in disgorgement plus a civil money penalty in the amount of \$50,000,000 for a total payment of \$90,000,000, exclusive of the value of the

management fee reductions provided for in section I.D. hereof. The \$90,000,000 payment shall be remitted and administered in accordance with the "Order Instituting Administrative and Cease-And-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and an Order to Cease-And-Desist Pursuant to Sections 203(e), and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940" in *In the Matter of Pilgrim Baxter & Associates, Ltd.* issued by the U.S. Securities and Exchange Commission ("SEC") on or near the date hereof (the "SEC Order").

2. The provisions in the SEC Order relating to the payment and administration of the \$90,000,000 referred to in this section are incorporated herein by reference, and such terms are agreed to as part of this Assurance by PBA. Amounts ordered to be paid as civil money penalties pursuant to this Assurance (*i.e.*, pursuant to the incorporated terms of the SEC Order) shall be treated as penalties paid to the government for all purposes, including tax purposes.

3. PBA agrees that it shall not 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 this Assurance, without the prior consent of the Attorney General.

4. No payments made or costs incurred by PBA pursuant to or in connection with this Assurance shall be borne directly or indirectly by any PBHG mutual fund or the shareholders thereof. PBA agrees and undertakes that it and its affiliates shall not directly or indirectly assess any fee or charge to any PBHG mutual fund or the shareholders thereof to defray, recoup or reimburse any such payments or costs, including, but not limited to, the reduction in management fees provided for in section I.D. below. Nothing in this Assurance shall prohibit PBA

from indemnifying or paying costs on behalf of the PBHG funds. Within 45 days after the end of PBA's fiscal years 2004 through 2009, the chief financial officer of PBA shall certify in writing to the Attorney General that PBA has complied in all material respects with the provisions of this paragraph.

B. Incorporation of Undertakings in the SEC Order

As part of this Assurance, PBA agrees to the terms of and shall comply with paragraphs 34(a), 34(e) and 36 in the SEC Order.

C. General Relief

1. PBA admits the jurisdiction of the Attorney General. PBA will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

2. Evidence of a violation of this Assurance by PBA shall constitute prima facie proof of violation of the Martin Act, General Business Law § 349 and Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General.

D. Reduction of Management Fee Rates For Five Years

1. Effective October 1, 2004, PBA shall establish reduced Management Fee Rates (as hereinafter defined) for the non-money market, open-end, retail mutual funds and variable annuities that are clones of such mutual funds as of December 31, 2003 identified on Schedule A hereto (and any successors thereto) ("Retail Fund(s)") as follows: based on assets under management ("AUM") in the Retail Funds as of December 31, 2003, Management Fee Rates (as hereinafter defined), in effect on that date, shall be reduced by at least 3.16% calculated on an AUM-weighted

basis. “Management Fee Rates” means the management fee rates specified in the management agreements between PBA and the Retail Funds reduced by any Management Fee (as hereinafter defined) waivers by PBA in effect as of December 31, 2003, which rates are set forth on Schedule A. The resulting reduction in Management Fee Rates adjusted for any accompanying change in Expense Reimbursements (as hereinafter defined) by PBA shall result in a Management Fee reduction in the first of five years of at least \$2 million from that which would have been paid by the Retail Funds based on the Management Fee Rates and Expense Reimbursements as of December 31, 2003. The reduced Management Fee Rates shall not be increased for five years from the effective date in this paragraph (the “Five Year Reduction Period”). “Management Fee(s)” means the fee or fees payable based on the Management Fee Rates. “Expense Reimbursements” means Management Fee waivers and expense reimbursements by PBA of the Retail Funds’ costs and expenses other than Management Fees.

2. If any Retail Fund on Schedule A ceases to operate (*e.g.*, due to liquidation or merger) (“Ceased Funds”) at any time during the Five Year Reduction Period, then the Management Fee Rates of the other PBHG funds to which PBA provides advisory services as of the date of such cessation shall be reduced so that the total Management Fees (excluding the Ceased Funds) based on AUM as of December 31, 2003 are reduced by at least 3.16%.

3. PBA represents and warrants that Schedule A accurately and completely states: (a) AUM for each of the Retail Funds as of December 31, 2003; (b) the Management Fee Rates, Management Fees, Expense Reimbursements and Management Fee waivers as of December 31, 2003; and (c) the reduced Management Fee Rates and the resulting Management Fee reduction of \$2 million as provided in this section.

E. Corporate Governance of Mutual Funds

1. On or after October 1, 2004, PBA shall not directly or indirectly manage or provide investment advisory services to any mutual fund in the PBHG family of mutual funds or any successors thereto (“PBHG Fund”) that has not agreed to and implemented the following provisions of this section insofar as they concern acts by the fund. In the event that any PBHG Fund does not continue to act in accordance with such provisions, PBA shall promptly terminate its management of, and/or provision of advisory services to, such fund.

Chairman of the Board

2. PBA may manage or advise a PBHG Fund only if the Chairman of the board of trustees of such fund is in all respects independent of PBA and its affiliates and has had no prior relationship, at any time, with PBA, its present or former affiliates, directors, officers, employees or agents acting in their capacity as such agents, or with such PBHG Fund (other than to have been a mutual fund trustee and/or shareholder of a PBHG Fund) (hereinafter referred to as an “Impermissible Relationship”). An Impermissible Relationship includes, but is not limited to, any of the following types of relationships: commercial, banking, financial, legal, accounting, consulting, advisory, familial, charitable, employee, director, trustee or officer relationship; provided, however, a charitable relationship shall not be deemed an Impermissible Relationship if the charitable relationship is disclosed to the board of trustees. During the period when acting as Chairman and for two years thereafter, the Chairman and any firm with which he or she is affiliated shall have no such Impermissible Relationship. An interested person of PBA or of the mutual fund shall not be deemed “independent.” For purposes of this Assurance, “interested person” has the same meaning as defined in the Investment Company Act of 1940 (“Investment Company Act”);

“affiliates” means any “affiliated person” as defined in the Investment Company Act; PBA or its affiliates, includes, without limitation, their respective predecessors or successors; and “familial” means all individuals within three degrees of consanguinity or affinity.

3. In the event that PBA desires input from the Attorney General as to whether a proposed Chairman of the board of trustees (or Senior Officer, as defined below) has a relationship that is an Impermissible Relationship, PBA may make full disclosure of the facts and circumstances and seek the prior guidance of the Attorney General; provided, however, that nothing contained herein shall be construed to excuse a breach of this Assurance where a Chairman or Senior Officer has already assumed office before the input of the Attorney General was sought by PBA.

Directors

4. PBA may manage or advise a PBHG Fund only if at least seventy-five percent of the membership of the board of trustees of each fund: (1) are not interested persons, as defined by the Investment Company Act, of the fund or of PBA; and (2) have not been directors, officers or employees of PBA or any of its affiliates at any point during the preceding 10 years (“Independent Trustees”); provided, however, that no current trustee shall be removed before 2005 for failure to meet the 10-year requirement. In the event that the board of trustees of any such PBHG Fund fails to meet this requirement at any time due to the death, resignation, retirement or removal of any Independent Trustee, PBA shall terminate its management of, and provision of advisory services to, such fund unless the Independent Trustees bring the board into compliance within a reasonable period of time not to exceed 120 days.

Senior Officer

5. Within 30 days of the parties’ execution of this Assurance, PBA shall

recommend in writing to the board of trustees of each PBHG Fund that the fund hire a senior officer (“Senior Officer”) with the title of at least Senior Vice President who shall have no Impermissible Relationship (as defined above) during the period he or she is acting as Senior Officer and for two years thereafter; provided, however, that the Senior Officer may be the same person designated as the chief compliance officer of the mutual fund pursuant to Rule 38a-1 of the Investment Company Act, 17 C.F.R. 270.38a-1(a)(4), so long as such person is not also an employee of PBA in any capacity other than pursuant to Rule 38a-1.

6. PBA may manage or advise a PBHG Fund only if such Senior Officer reports directly and exclusively to the board of trustees of the fund and such reporting is as often as may be appropriate, but no less than quarterly; provided, however, that any material breach of state or federal securities laws or of fiduciary duty by PBA or the fund shall be reported immediately by PBA to the Attorney General of the State of New York.

7. PBA may manage or advise a PBHG Fund only if, subject to approval by the independent trustees of the fund, the Senior Officer has the authority to retain consultants, experts or staff as may be reasonably necessary to assist the Senior Officer in the performance of his or her duties. The Senior Officer and such consultants, experts or staff shall be compensated at their reasonable and customary rates as determined by the independent trustees.

8. PBA may manage or advise a PBHG Fund only if the duties and responsibilities of the Senior Officer include at least the following:

- (a) monitoring compliance by the fund and its investment advisor(s) (insofar as the advisors act in connection with the fund), with: (i) federal and state securities laws; (ii) state laws respecting potential or actual conflicts of interests; (iii)

their respective fiduciary duties; and (iv) applicable codes of ethics and/or compliance manuals; and

(b) establishing a process designed to ensure that proposed management fees (including, but not limited to, advisory fees) to be charged the mutual fund are reasonable, negotiated at arms' length and are consistent with this Assurance. Proposed management fees include, but are not limited to, renewal of existing management fee agreements or continuation of such existing fee agreements for more than a year after approval by the board of trustees.

9. PBA may manage or advise a PBHG Fund only if reasonableness of the proposed management fees is determined by the board of trustees of the fund using either:

(a) an annual competitive bidding process, supervised by the Senior Officer, that includes at least three sealed bids with proposed management fees; or

(b) an annual independent written evaluation prepared by or under the direction of the Senior Officer that considers at least the following: (i) management fees (including any components thereof) charged to institutional and other clients (*e.g.*, a variable annuity that is a clone of the fund) of PBA for like services; (ii) management fees (including any components thereof) charged by other mutual fund companies for like services; (iii) costs to PBA and its affiliates of supplying services pursuant to the management fee agreements, excluding any intra-corporate profit; (iv) profit margins of PBA and its affiliates from supplying such services; (v) possible economies of scale as the funds grow larger; and (vi) the nature and quality of PBA's services, including fund performance.

10. PBA may manage or advise a PBHG Fund only if the Senior Officer keeps the board of trustees fully and promptly informed of the bidding process or the fee evaluation process, as the case may be.

11. PBA may manage or advise a PBHG Fund only if PBA cooperates fully and promptly with the Senior Officer and provides any information (including preparation of summaries or other compilations of data) and documents in the possession, custody or control of PBA that the Senior Officer requests and that relate to or concern any of the matters referenced in this section. PBA shall promptly provide the Senior Officer with access to any director, officer or employee of PBA and use its best efforts to cause such persons to answer any and all inquiries put to them by the Senior Officer that relate to or concern any such matters.

12. PBA may manage or advise a PBHG Fund only if each fund: (a) hires a Senior Officer by October 1, 2004; and (b) thereafter continues to retain a Senior Officer. By October 1, 2004, PBA shall provide a written schedule to the Attorney General that identifies the names of each Senior Officer hired by each fund and describes their respective backgrounds and compensation. Any fund that has not hired or designated a Senior Officer shall also be identified together with the reason(s) therefor. PBA shall keep the information on the schedule current and provide an updated schedule to the Attorney General within 10 days of any change in such information. For good cause shown, the Attorney General may in his sole discretion extend the October 1, 2004 deadline in this paragraph.

13. The Senior Officer or officers hired may serve as Senior Officer to more than one fund.

14. Within 15 business days of the board of trustees' determination of

management fees, PBA shall publicly disclose a reasonable summary of the evaluation provided for in paragraph E.8(b), and the opinions or conclusions of the board with respect thereto (hereinafter referred to as the “Fee Summary”). PBA may manage or advise a PBHG Fund only if the fund also publicly discloses the Fee Summary. The Fee Summary shall contain data regarding factors referenced in this section and sufficient specifics so that a reasonable investor in the fund can make an informed decision respecting the reasonableness of the fees; provided, however, the Fee Summary shall not be required to include or reveal confidential, competitively sensitive data. An identification or general description of factors considered shall not be sufficient. Public disclosure shall include, at least: (a) continuous, prominent posting (in downloadable format) on the website of PBA so that Fee Summaries of at least the two most recent fee evaluations are posted as part of the fund description; (b) the Fee Summary of the most recent fee evaluation shall accompany each prospectus or amendment thereto furnished to potential or actual shareholders; and (c) notice of the availability of the Fee Summary displayed prominently in the periodic account statements furnished to shareholders of the fund.

F. Disclosure to Investors

In an easy to understand format, PBA shall:

(1) include with each periodic account statement sent to investors by PBA, its affiliates or a mutual fund to which PBA provides management or advisory services: (a) the fees and costs, in actual dollars, on a fund-by-fund basis, charged to each investor based upon the investor’s most recent quarterly closing balance; and (b) the fees and costs, in actual dollars, that would be charged a hypothetical investment of \$10,000 held for the next 10 years and the impact of such

fees and costs on fund returns for each year and cumulatively, assuming a 5% return for each year and continuation of the reduced Management Fee Rates provided in section I.D. above.

(2) maintain continuous, prominent posting on its website of: (a) a calculator that will enable an investor to calculate the fees and costs, in actual dollars, on a fund-by-fund basis, charged to each investor based upon the investor's most recent quarterly closing balance; and (b) the fees and costs, in actual dollars, that would be charged a hypothetical investment of \$10,000 held for the next 10 years and the impact of such fees and costs on fund returns for each year and cumulatively, assuming a 5% return for each year and continuation of the reduced Management Fee Rates provided in section I.D. above.

(3) disclose in the applicable prospectus or amendment thereto a summary showing the fees and costs, in actual dollars, that would be charged a hypothetical investment of \$10,000 held for the next 10 years and the impact of such fees and costs on fund returns for each year and cumulatively, assuming a 5% return for each year and continuation of the reduced Management Fee Rates provided in section I.D. above.

II. Other Provisions

A. Scope Of This Assurance

1. After the filing of a Stipulation of Dismissal as provided for in section II.B. below, this Assurance shall conclude the Action brought by the Attorney General and any other action the Attorney General could commence against PBA arising from or relating to the subject

matter of the Complaint; provided, however, that nothing contained in this Assurance shall be construed to cover any claims that may be brought by the Attorney General to enforce PBA's obligations arising from or relating to the provisions contained in this Assurance.

2. If PBA does not make the payments as provided in section I.A. of this Assurance (*i.e.*, pursuant to the SEC Order), or the management fee reductions as provided in section I.D. of this Assurance, or PBA defaults on any of its obligations under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to PBA (during which 10-day period, PBA has the opportunity to cure its default) and PBA agrees that any statute of limitations or other time related defenses applicable to the subject of the Complaint and any claims arising from or relating thereto are tolled from and after the date of filing of the Complaint with the Court. In the event of such termination, PBA 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 Action, against PBA or from using in any way any statements, documents or other materials produced or provided by PBA prior to or after commencement of the Action, including, without limitation, such statements, documents or other materials provided for purposes of settlement negotiations.

3. Nothing herein shall preclude New York State, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the New York State Attorney General and only to the extent set forth in paragraph II.A.2 above (collectively, "State Entities") and the officers, agents or employees of State Entities, from asserting any claims, causes of action, or applications for compensatory, nominal and /or punitive damages, administrative, civil

or criminal or injunctive relief against PBA arising from or relating to the subject of the Complaint.

4. Except in an action by the Attorney General to enforce PBA's obligations in this Assurance, 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 PBA in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon any persons or entities who are not a party to this Assurance. Nothing herein shall be construed to prohibit the use of any e-mails or other documents of PBA or of others. **B. Stipulation of Dismissal**

After payment is made by PBA in accordance with section I.A hereof, the Attorney General receives evidence satisfactory to him that the payment was in fact made and the attorneys of record for all defendants in the Action have signed a Stipulation of Discontinuance with prejudice with respect to the Action as against PBA only, in the form attached hereto as Exhibit A, the Attorney General will execute and the Attorney General will file said stipulation with the Court; provided, however, that the Court shall retain jurisdiction of this Assurance, the Action and the parties hereto for the purposes of enforcing the terms of this Assurance. In the event counsel for the individual defendants refuse to sign said stipulation, PBA may make a motion, in which the Attorney General will join, pursuant to CPLR 3217(b) to obtain an order discontinuing the Action as against defendant PBA only. If the CPLR 3217(b) motion is denied, the Attorney General agrees that it will not prosecute the Action as against PBA. Neither this Assurance nor the dismissal of the Action as against PBA shall prejudice, waive or effect any claims, rights or remedies with respect to the

individual defendants in the Action or any other person or entity, all of which claims, rights and remedies are expressly reserved.

C. Cooperation

1. PBA shall cooperate fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents and employees of PBA and/or the PBHG Funds cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation (including, without limitation, the continuing Action against the individual defendants) or other proceeding relating to “market timing” and/or the subject matter of the Complaint, and such cooperation shall include, without limitation:

(a) production, voluntarily and without service of 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 PBA to prepare;

(b) without the necessity of a subpoena, having the current and former officers, directors, trustees, agents and employees of PBA or the PBHG Funds 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 former officers, directors, trustees, agents and employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise; “Proceedings” include, but are not limited to, any meetings, interviews, depositions, hearings, trials or other proceedings.

(c) fully, fairly and truthfully disclosing all information and producing

all records and other evidence in their possession relevant to all inquiries made by the Attorney General;

(d) waiving, upon request by the Attorney General, all privileges including, without limitation, attorney-client and attorney work product privileges, with respect to all matters in the Complaint through the date of the filing of the Complaint;

(e) waiving, upon request by the Attorney General, all privileges relating to any internal investigations concerning matters in the Complaint (whether conducted before or after the filing date of the Complaint), including, without limitation, production of all interview notes taken in connection with any internal investigations; and

(f) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Complaint and to answer questions.

3. All communications relating to cooperation pursuant to this Assurance may be made to PBA's attorneys as follows: Joanna Shally, Esq., Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022-6069.

4. In the event PBA fails to comply with this section of the Assurance, the Attorney General shall be entitled, in addition to any other remedies in the Assurance or otherwise, to: (a) liquidated damages of \$100,000 for each day that PBA is in non-compliance; and (b) specific performance.

D. No Indemnification

1. Except as otherwise required by PBA's by-laws or corporate charter or law, PBA shall not make any payments of indemnification or allowances of expenses respecting "market timing" transactions in PBHG Funds to any person, including, without limitation, current or former directors, officers, employees or agents. PBA shall not make any discretionary payments of indemnification or allowances of expenses (*i.e.*, payments or allowances not required by law) respecting "market timing" transactions in PBHG funds to any person, including, without limitation, current or former directors, officers, employees or agents. To the extent PBA has already made discretionary payments of indemnification or allowances of expenses respecting "market timing" transactions in PBHG Funds to any person prior to the date of this Assurance, PBA shall make all reasonable efforts to recover such payments or allowances from such persons.

2. PBA shall not increase the benefits of indemnification or allowances of expenses respecting "market timing" transactions in PBHG Funds enjoyed by directors, officers, employees or agents pursuant to PBA's by-laws, corporate charter or otherwise.

E. Miscellaneous Provisions

1. 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.

2. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

3. PBA consents to the jurisdiction of the Attorney General in any proceeding

or action to enforce this Assurance.

4. PBA enters into this Assurance voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent or representative of the Attorney General to induce PBA to enter into this Assurance.

5. PBA 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 PBA's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings to which the Attorney General is not a party.

6. This Assurance may be changed, amended or modified only by a writing signed by all parties hereto.

7. This Assurance, together with the attached exhibits and schedule, constitutes the entire agreement between the Attorney General and PBA and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

8. If any provision of this Assurance is found to be unenforceable, such finding shall not effect the enforceability of the remaining provisions hereof.

9. This Assurance shall be binding upon PBA and its successors and assigns.

10. This Assurance shall be effective and binding only when this Assurance is signed by all parties. This Assurance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

SCHEDULE A

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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STATE OF NEW YORK,

Plaintiff,

Index No.: 403728/2003

-against-

PILGRIM BAXTER & ASSOCIATES, LTD.,
GARY L. PILGRIM and HAROLD J. BAXTER,

Defendants.

-----X

STIPULATION OF DISMISSAL WITH PREJUDICE
AS AGAINST DEFENDANT PILGRIM BAXTER & ASSOCIATES, LTD. ONLY

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for all parties, that there is no party who is an infant or incompetent person for whom a committee has been appointed or conservatee, nor is there any person not a party who has an interest in the subject matter of this action, and pursuant to CPLR § 3217(a), that this action be and the same hereby is discontinued with prejudice **as against defendant Pilgrim Baxter & Associates, Ltd. only**, without costs to the parties as against the others; provided, however, that the Court shall retain jurisdiction of this matter, the above-entitled action, plaintiff and defendant Pilgrim Baxter & Associates, Ltd. for the purposes of enforcing the terms of the Assurance of Discontinuance Pursuant

to Executive Law § 63(15) between Plaintiff and Defendant Pilgrim Baxter & Associates, Ltd., dated June ____, 2004 (the "Assurance"), entered into concerning the above-entitled action. Neither the Assurance nor the dismissal of the Action as against Pilgrim Baxter & Associates, Ltd. only shall prejudice, waive or effect any claims, rights or remedies with respect to the individual defendants or any other person or entity, all of which claims, rights and remedies are expressly reserved.

IT IS FURTHER STIPULATED AND AGREED, by and between the undersigned counsel for all parties, that this Stipulation may be executed in counterparts exchanged by facsimile.

Dated: New York, New York
_____, 2004

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By: Charles T. Caliendo
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