

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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IN THE ORIGINAL JURISDICTION  
OF THE SUPREME COURT

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Appellate Case No. 2013-000754

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South Carolina Retirement System Investment Commission,..... Petitioner,

v.

Curtis M. Loftis, Jr., as custodian of the South Carolina Retirement  
Systems Group Trust,.....Respondent.

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**RETURN TO PETITION FOR WRIT OF MANDAMUS**

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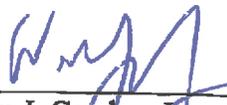
William J. Condon, Jr.  
South Carolina State Treasurer's Office  
Post Office Box 11778  
Columbia, SC 29211  
(803) 734-2655  
Attorney for the Respondent

April 15, 2013

Respondent, the State Treasurer of South Carolina, has long sought documented approval for the “legal sufficiency” of the Warburg Pincus investment contract. Specifically, Respondent has requested: (1) information about the safekeeping of the assets of the South Carolina Retirement Systems once the assets are disbursed to Warburg Pincus; and (2) formal certification that the investment fully complies with the requirements of the Retirement System Investment Commission (RSIC), the representations made to the RSIC by its staff when it voted to approve the investment, and the motion to approve the investment. In support of its Petition, the RSIC filed four affidavits which contain sworn testimony addressing each of the aforementioned needs.

Having received the sworn affidavits containing the information he was seeking, and in reliance thereon (but without admitting any of the allegations in the Petition), the State Treasurer authorized the funding of the Warburg Pincus Private Equity XI, L.P. investment this morning. The funding directive transmitted to Bank of New York Mellon, the State Treasurer’s custodial bank, is attached hereto as Exhibit 1.

This action is now moot because the State Treasurer has performed the sole action the RSIC requested this Court to mandate. The Respondent respectfully requests that this Court now dismiss this action as moot.

  
\_\_\_\_\_  
William J. Condon, Jr.  
South Carolina State Treasurer’s Office  
Post Office Box 11778  
Columbia, SC 29211  
(803) 734-2655  
Attorney for the Respondent

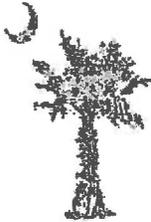
April 15, 2013

REYNOLD WILLIAMS III, CTE  
CHAIRMAN

EDWARD N. GLOFF  
VICE CHAIRMAN

DAVID K. ADANT  
COMMISSIONER

ALLEN R. GIBSON III, CFA  
COMMISSIONER



SOUTH CAROLINA RETIREMENT SYSTEM

INVESTMENT COMMISSION

1201 MAIN STREET | SUITE 1510 | COLUMBIA, SC | 29201

CHRIS M. COFFEY JR.  
COMMISSIONER

JAMES E. POWERS  
COMMISSIONER

S. THOMAS JACOBINI, CPA  
COMMISSIONER

HENRIETTA HARRIS, JR., CPA  
CHIEF INVESTMENT OFFICER

March 29, 2013

RJ Weaver  
One Mellon Center  
Pittsburgh, PA 15258  
Fax- 877-758-2142

Re: **Capital Call Funding Date:** April 1, 2013  
**Account Name:** Warburg Pincus XI  
**BNY Mellon Account Number:** TBD

Dear RJ:

You are directed to process the following transaction on April 1, 2013:

Transfer \$11,740,171.22 from RSOF8000002 SCRS Internal Cash to Warburg Pincus XI and wire to the following instructions:

Wire a total of \$10,407,561.09 to:

Bank Name: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 4<sup>th</sup> Floor  
New York, NY 10017

ABA/Swift Number: [REDACTED]  
Account Name: Warburg Pincus Private Equity XI, L.P., JPMorgan Chase Bank, N.A., as  
Administrative Agent Collateral Account

Account Number: [REDACTED]  
Reference: SCRS

Wire a total of \$1,332,610.13 to:

Bank Name: JPMorgan Chase Bank, N.A.  
270 Park Avenue, 4<sup>th</sup> Floor  
New York, NY 10017

ABA/Swift Number: [REDACTED]  
Account Name: Warburg Pincus Private Equity (E&P) XI-A, LP  
Account Number: [REDACTED]  
Reference: SCRS

Please contact RSIC operations staff if you have any questions regarding this funding directive. We appreciate your assistance.

Re: Capital Call Funding Date: April 1<sup>15</sup>, 2013  
Account Name: Warburg Pincus XI  
BNY Mellon Account Number: TBD

Sincerely,

Signature: [Handwritten Signature]

Printed Name: Harshel Harper Title: CFO #129/13

Signature: [Handwritten Signature]

Printed Name: Reynolds Williams Title: Chairman, South Carolina Retirement System Investment Commission on behalf of the South Carolina Retirement Systems Group Trust

Signature: [Handwritten Signature] 4/15/13

Printed Name: Shakun Tahiliani Title: Sr. Asst State Treasurer

Signature: [Handwritten Signature]

Printed Name: State Treasurer Title: State Treasurer  
CURTIS LOFTIS JR 4/15/2013

TRANSMISSION VERIFICATION REPORT

TIME : 04/15/2013 08:40  
NAME :  
FAX :  
TEL :  
SER.# : U63274F2J142179

DATE, TIME	04/15 08:39
FAX NO./NAME	9-1-8777582142
DURATION	00:00:25
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

## Tahiliani, Shakun

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**From:** Geiger, Amanda <amanda.geiger@bnymellon.com>  
**Sent:** Monday, April 15, 2013 9:01 AM  
**To:** Leidinger, Bill; Tahiliani, Shakun  
**Cc:** Adams, Clarissa; Pacellio, Lisa R  
**Subject:** Warburg Pincus XI

Hello,

The direction letter for Warburg Pincus XI has been received in the amount \$11,740,171.22.

Thanks,  
**Amanda Geiger**  
Specialist  
Private Investment Accounting & Administrative Services  
BNYMellon Asset Servicing  
Phone: (412) 234-6414  
Email: amanda.geiger@bnymellon.com

The information contained in this e-mail, and any attachment, is confidential and is intended solely for the use of the intended recipient. Access, copying or re-use of the e-mail or any attachment, or any information contained therein, by any other person is not authorized. If you are not the intended recipient please return the e-mail to the sender and delete it from your computer. Although we attempt to sweep e-mail and attachments for viruses, we do not guarantee that either are virus-free and accept no liability for any damage sustained as a result of viruses.

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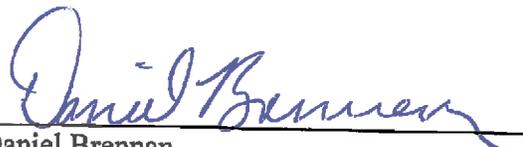
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**PROOF OF SERVICE**

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I, the undersigned, do hereby state that I have on April 15, 2013, served a copy of the enclosed **RETURN TO PETITION FOR WRIT OF MANDAMUS** upon the Petitioner, through its attorneys of record, via hand delivery to the following address.

Henry P. Wall, Esquire  
E. Wade Mullins, Esquire  
Bruner, Powell, Wall & Mullins, LLC  
1735 St. Julian Place, Suite 200  
Columbia, SC 29204

  
Daniel Brennan  
South Carolina State Treasurer's Office  
Post Office Box 11778  
Columbia, SC 29211  
(803) 734-5065



**THE HONORABLE CURTIS M. LOFTIS, JR.**  
State Treasurer

**Background Information: Warburg Pincus Funding**

April 15, 2013

The Treasurer is the statutory custodian of the State's funds and is charged with the safekeeping of its assets. This custody account, along with other accounts managed by the Treasurer, must be regarded with utmost reverence and every effort must be made to safeguard the public's treasury.

The Treasurer's accounts were valued on Sunday, April 14, 2012 at approximately \$40 billion. In order to maintain accounts of this size, the Treasurer is obligated to establish controls to ensure the regular, orderly and safe flow of funds. Policies, procedures and forms must be standardized and subject to internal controls and audit procedures.

One of these policies is that the South Carolina Investment Commission shall submit a written, signed, legal, one-page document, uniform in appearance, stating that the investment to be funded has substantially the same terms, fees and conditions as were approved by the Investment Commission. This simple document is called a document of Legal Sufficiency and should require no more than a few minutes to complete.

The Investment Commission chose not to send a legal document and instead relied on a casual email that met none of the requirements.

On Thursday, April 11, 2013, the Investment Commission filed suit seeking the Treasurer to fund a \$50 million investment. In the sworn, notarized Court pleadings, the Commission gave repeated assurances that the investment fulfilled the requirements for the Treasurer's document of Legal Sufficiency.

Therefore, on Monday, April 15, 2013, as the State Treasurer's conditions for the safe transmittal of public funds have been met by the Investment Commission, the Treasurer authorized the Warburg Pincus private equity investment account opened and funded. This funding issue is now moot.

It is noted, with regret, that the Commission had the information to complete this one-page document of Legal Sufficiency as early as January 30, 2013, but did not transmit that information to the Treasurer.

The safety of the pension funds must be paramount in every action taken by the fiduciaries of the Retirement System Investment Commission. Standardizing the forms, policies and procedures leaves little room for error in the multibillion dollar account and provides the people of South Carolina with the protection, transparency and accountability they deserve.

[RSIC LETTERHEAD]

April 15, 2013

The Honorable Curtis M. Loftis, Jr.  
Treasurer of the State of South Carolina  
1200 Senate Street, Wade Hampton Office Building  
Columbia, SC 29201

RE: DISBURSEMENT OF FUNDS FOR \_\_\_\_\_  
LEGAL SUFFICIENCY CERTIFICATION

Dear Treasurer Loftis:

On \_\_\_\_\_, the members of the Retirement System Investment Commission voted to invest \$\_\_\_\_\_ of the South Carolina Retirement Systems' funds in [NAME OF INSTRUMENT OR ENTITY].

As a part of my duties with the Commission, I have reviewed the offering documents, all representations made to the Commission and its staff, the materials provided to the Commissioners prior to their vote approving the investment, the motion and related discussion in which the Commission tentatively approved the investment, and all documents and contractual provisions related to the final documents and instruments regulating, managing and documenting the investment, including the responsibilities and risks remaining with the fund and the Commission. Pursuant to the policy of the Commission, after fully and completely reviewing all applicable documents, the undersigned, as General Counsel for the Commission makes the following certifications regarding the proposed investment.

The contract documents associated with the investment comport with and meet the representations made to the Commission prior to the vote and the motion approving the investment. [except as follows]. The security(ies) in question is or will be appropriately issued pursuant to all applicable state and federal laws and legal requirements. The securities will be held in custody by \_\_\_\_\_. The proposed investment complies with the Commission's Annual Investment Plan and the documents to be executed to initiate the investment provide adequate and appropriate protection of the Retirement Systems' interests.

I am pleased to provide my unqualified opinion as General Counsel for the Commission and a member of the South Carolina Bar that the investment fully complies with the requirements of the Commission, the representations made to the Commission when it voted to approve the investment, and the motion to tentatively approve the investment made on \_\_\_\_\_. The documentation executed is legally sufficient and provides appropriate protections of the Retirement Systems' funds so as to enable you as Custodian and a fiduciary to disburse the funds requested by the Commission as directed.

If you have any further questions, do not hesitate to contact me.

Sincerely,

Legal Counsel