South Africa Private Equity Congress
February 12-13, 2009
Cape Town, South Africa

KEYNOTE ADDRESS

Thank you.
It is a great pleasure to be here in South Africa again and to have this opportunity to share a few thoughts with you about investment potential in South Africa and the African continent from U.S. public pension funds.
It is a rare opportunity that I get to speak to a group like this.
In America, there is an unwritten rule that lawyers should be seen and not heard.
In law school they teach us never to speak in absolutes.
The answer to every question requires two hands - on the one hand and then on the other hand.
With two guesses, I have a much better chance of being right.
I am going to try and put aside some of my legal training and speak candidly with you.
I think I can get away with it since I am not billing for this advice.

This is actually my fourth trip to Africa and South Africa.
My first visit came just 6 months after Nelson Mandela took office.
This trip comes just one month after the U.S. made history when Barack Obama became the first African American U.S. President.
That is something I doubted I would see in my lifetime. But it happened and it has created a measure of excitement and anticipation throughout the entire world that can only be good and help bring the people from all countries closer together.

I will share with you my thoughts about the investment potential of U.S. public funds in South Africa and to some extent, the African continent, which you asked me to do here today.
But before I get to that topic, it is important that I provide a little context about my experience and the climate in which U.S. public funds are operating today.
I've spent nearly 20 years in the investment sector.
In addition to representing general partners with their fund structure and documentation, I represent a number of public pension funds.

Foster Pepper, where I chair the Investment Management Group, consisting of 12 attorneys, is comprised of a total of 140 attorneys.
Our main office is located in Seattle Washington, in the Northwest corner of the United States.
That is about as far away as you can get from the financial center of New York City.
We started out in the pension fund world doing work for the now $85 billion Washington State Investment Board with respect to its private equity investments.
The issues were challenging and exciting, and they gave us the chance to make a real difference.
Many more opportunities evolved from that assignment.

Today we represent approximately 25 pension funds throughout the U.S., including five of the 10 largest funds in the country.
We even have the good fortune to represent three major funds from the state of New York: New York City, New York State Common and New York State Teachers.

We still do work for Washington, as well as for the nation's largest public pension fund, CalPERS, and its emerging market manager, Centinela, which oversees a substantial discretionary account.
We also represent Texas Teachers which, according to Pensions & Investments magazine, has the most capital invested in emerging markets.

How has a mid-sized regional law firm like ours developed a nationwide practice representing public pension funds?
I like to claim it is the talent of the practice leader, but if you push me, I will concede that there are some other reasons as well.
It is an example of the kind of opportunities that are generally available in the world of public pension funds.
If you are willing to put in the effort. and demonstrate that you provide value, there are plenty of opportunities - at least that has always been the case up until now.
When I began representing public funds, many of the major law firms looked down their noses at representing public pension funds.
Those firms wanted to be on the other side, working for the banks, the major investment firms, the hedge funds and the private equity firms.
They perceived that side of the fence as having unlimited resources and unlimited legal budgets.
The events of the last couple of years have caused many of those firms to take a second look at the opportunities of representing public pension funds.
For my group, we were always drawn by the challenge of the work and quality of the people we have had the opportunity to represent.
It has been a very satisfying career and I truly believe the best is yet to come.

You have heard it said "we live in interesting times."
Never has that been more true. Everywhere you turn, there are tremendous challenges and opportunities.

While it was only about a month ago that history was made when the first African American U.S. President took office amid great hope and optimism, President Obama was immediately handed a staggering list of economic problems that must be addressed to get our country and global economy moving again.

This economic crisis is the most far-reaching I have seen in my professional career, even though we have managed through many other previous threats to the economy.
The savings and loan crisis and the dot-com bust were both serious blows, but nothing like we have experienced since about July of 2007.
Those who want to simplify the problem will tell you that U.S. consumers quit filling their shopping carts and the impact was felt around the globe.

It dramatically demonstrated just how tied the world economy is to the U. S. consumer.

But the story of this recession is far more involved than just U.S. consumers who decided to take a break because they were over extended.
It is the story o elaborate financial engineering that attempted to defy gravity.
It is the story of too much capital and unrealistically cheap debt.
It is the story of investors, like lemmings, "chasing yield."
It is the story of a financial world where regulation was sparse, ineffective and generally ignored.
It is the story of a highly-leveraged "Shadow Finance System" dependent on short-term liquidity that reminded me of the children's game of musical chairs. When the music stops, hold onto your chair for dear life.
It is the story of greed fueled by deception and bonuses earned by shoving money and deals out the door, even though everyone knew there was no chance for a successful outcome.
It is the story of promising something for nothing and being fooled to believe it was really possible.
It is the story of being "once burned, twice shy." Financial institutions that have survived the initial wave are hoarding money, refusing to issue loans to avoid being fooled again.
It is the story of a mother opening the mail and finding a returned check from the bank stamped "insufficient funds," and she wonders, is it the bank or me?
And finally, it is a story of a paradox of thrift.
What is good for the individual is sometimes bad for the system.
It's good for an individual to save.
If everyone saves, no one spends.
It's good to reduce individual risk.
If everyone tries to reduce risk, it can create greater system wide risk.
If businesses and hedge funds see too much volatility
they sell liquid assets to raise cash.
If everyone sells,
this creates greater volatility.

In short, we came precariously close to a total collapse of our global economic system.
The patient survived the initial attack, but is seriously weakened.
Recovery will take some time, and there will likely be many complications that will slow or threaten the recovery.
Public funds were not immune to the economic chaos.
Many lost from 20 to 40 percent of their value.
Most funds pride themselves on their diversification strategy, but the sharp decline in public equities, threw many of the models badly out of balance.
In a three week period during October 2008, many funds suddenly found themselves over-weighted in private equity, bonds and real estate.
Rebalancing was forcing many funds to miss potentially lucrative investments.
Fund investment officers, with their commitment to managing a diversified portfolio, have their hands tied. They are doing nothing.

Bob Maynard, CIO of the Public Employee Retirement System of Idaho, states that he is inclined to do nothing. But the problem with doing nothing, he says, is that he doesn't know when he's done.

In addition, the diminished value of funds, offset by contractual obligations to some fund managers, has forced some funds to sell investments to get cash to meet their contractual obligations.
With the need to rebalance and with declining investment returns, cash-strapped governments are looking for any excuse to delay or skip payments to pension funds as a means of conserving cash.
Fewer investment returns and less new money coming into the funds from Legislatures compound the investment challenges of public fund investment officers.

Chris Ailman, CalSTRS' CIO and past CIO for the Washington state retirement systems, was recently quoted in Pensions and Investments Magazine.
He said, "The market may be bad, but last night I slept like a baby. I woke up every hour and cried."

Despite the story I am telling you today, I remain an optimist. The threats are real, but I believe we are managing through them.
Even though we looked into the abyss of economic collapse, the greatest threats have passed and we now are beginning our long recovery process.

What does all this mean for South Africa? In the short term, I have to be candid: the potential is not that great.
U.S. fund investment officers are preoccupied with other issues and those who are not already invested are not going to be looking for a great many new opportunities for the next 9 to 12 months.
However, I think you can use this time to better position yourselves so that in the following 12-36 months, when the gates open, you can be at the front of the line.
Use the time to educate U.S. public funds about the great potential.
Use the time to establish credibility.
Out of this financial crisis, one new word has gained added popularity: transparency.
Find new ways to underscore a commitment to being transparent in your investment opportunities. U.S. public pension funds value openness and continuity.

The NYC CIO said to me last week, "If the GPs don't trust us with their fund information, why should we trust them with our money?"
The way to get an investment is to be consistent with your message and tell it repeatedly.
To secure significant U.S. investment capital, you have to be patient and do your homework; and that is true today more than ever.
Investment officers have to get comfortable with you and your investment thesis. They are going to be looking for people willing to start small and build a solid record of performance.

A few years ago, many public funds were talking of the challenge of finding places to put all their money to work. Thanks to the rapid de-leveraging of the economy, that's one problem that has been solved.

Going forward there will be much more caution about where money is put to work.
In response to some of the challenges that fund investment officers are facing today, you can anticipate some other requirements before investment commitments are made.
There will need to be a true alignment of interests when it comes to fees and returns.

There has been a change in attitude in America.
Flying on the corporate jet is out; paying massive bonuses for subpar performance is also out.
In that same vein, fund investment officers are going to take an increasingly critical look at fees, to insure that they are reasonable.
It will be necessary to prove that the logic for the fees is greater than charging whatever the market will allow.
Fund investment officers are sensitive to the idea that people are getting rich off the fees, without regard to how the investments perform.
They will be willing to pay fair fees but they are going to be asking questions about how the fees are established.
They will look much more kindly at investments, where the fee structure has been designed to relate to the cost of managing or monitoring the investment.
Two-tiered fee structures, where the fees are decreased after the initial investment period, will increasingly be sought.

I also think that in future investments, fund investment officers will begin insisting on an emergency exit to allow a fund out of an investment for cause, the development of unforeseen circumstances, and no fault divorce.

There will continue to be investments made in emerging markets, and some of that money can be directed toward South Africa and the continent of Africa.
But there are a number of perceptions and misperceptions that must be addressed in the name of transparency.
These include the continual political unrest, monetary instability, the specter of corruption across the continent and the misperception that the African continent is one country.
The present U.S. economy has taught investment officers that there is no such thing as a sure bet.
They will look to investment opportunities with a critical eye and you must stand up to the scrutiny.
However, there are some things developing in favor of Africa.
From a U.S. perspective, President Bush, for all his perceived failings, succeeded in raising the profile of Africa in the U.S.
I expect President Obama will continue to shine a light on the needs of the continent.
Powerful U.S. business leaders and philanthropists like Bill and Melinda Gates,

Paul Allen, the other co-founder of Microsoft and Warren Buffett have added to the awareness of Africa.
They have the potential to bring new credibility to African investment.
By the way, both the Gates' and Paul Allen live and are headquartered in my home town, Seattle, Washington.
From a South Africa perspective, you are one of the most advanced emerging markets.
There is a sound monetary system.
There is a developed economy.
There is an infrastructure for investing, both legal and accounting.
There is sound corporate governance
And finally, and most importantly, In South Africa I have found that there is a new generation of New York investment caliber managers capable of managing and investing institutional money.

In summary, my message is to use this time to position South Africa and other African countries to take advantage of the opportunities when they come.
Tell your story over and over again, and tell it to everyone:
investment staff, gatekeepers, and investment board members.
Every fund is different and the key to the investment decision varies.
Leaving no stone unturned is the best approach.
Do your homework.
Have your private placement memorandum (PPM) completed or substantially prepared.
Polish off your presentation materials.
Tell the story about the positives of the country of South Africa, the entry point to the African continent, and why a U.S. pension fund should invest here, rather than Brazil or India, for example.
Be able to articulate your business plan.
Get to know the people who make investment decisions.
Make changes to make investment opportunities more attractive.
Most of all, don't take "no" for an answer.
Every time you get "no", you need to translate that to "not yet."
Getting a foothold with U.S. public pension funds is a long-term undertaking and the events of the last two years make it even more difficult.
You must be both patient and persistent.
If you are, experience tells me eventually you will succeed.

If the opportunity is good enough, sooner or later more U.S. investment capital will find its way to South Africa and other countries of Africa.
We won't miss the opportunity.

Thank you so much for this opportunity to visit this great country and share my perspective.