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## MEMORANDUM

TO: CIM Investors, Investment Consultants, Taft-Hartley & Public Pension Funds

FROM: North America's Building Trades Unions

DATE: August 15, 2018

RE: CIM Group—New York City

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### **Background**

CIM Group is a private equity real estate fund manager with a series of closed and open-ended real estate and infrastructure funds. CIM has adopted an internal Responsible Contractor Policy ("RCP" or "Policy") that is modeled after the policy of one of its investors, calPERS. For investors who care about environmental, social, and governance issues, responsible contractor policies can mitigate risk and set baseline standards for construction and service contracts on projects.

### **Performance**

CIM Group's real estate funds have underperformed their peers. Out of five closed real estate funds, two of CIM Group's funds have landed in the bottom quartile, and three out of five have underperformed the median.<sup>1</sup>

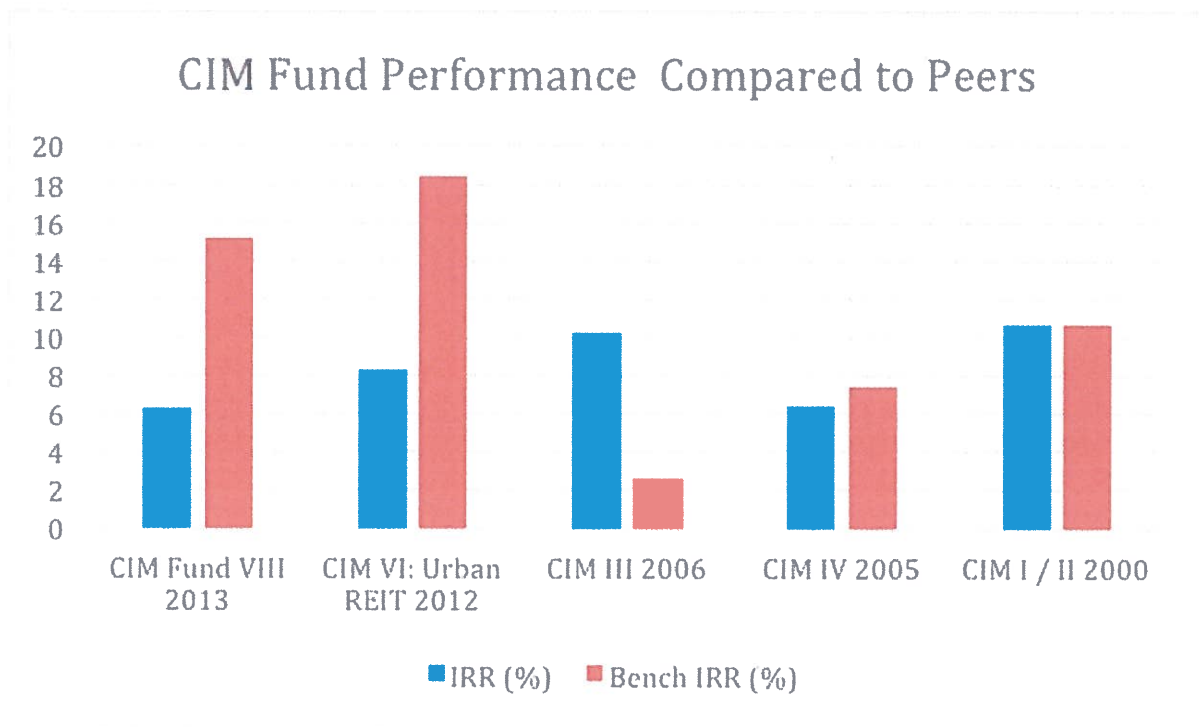
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<sup>1</sup> Data pulled from Preqin analysis prepared on June 20, 2018 at [www.preqin.com](http://www.preqin.com).

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Fund	Vintage	Called (%)	DPI (%)	RVPI (%)	Multiple (X)	IRR (%)	Bench IRR (%)	Diff. (%)	As at:	Quartile	Source
CIM Fund IX	2017	36.4	0	97.4	0.97	n/m	n/m	n/m	31-Dec.-17	-	CIM Group
CIM Fund VIII	2013	72.3	1.7	115	1.17	6.3	15.2	-8.9	31-Dec.-17	4th	CIM Group
CIM VI: Urban REIT	2012	100	17.3	121.4	1.39	8.3	18.4	-10.1	31-Dec.-17	4th	CIM Group
CIM III	2006	107	123.7	47.4	1.71	10.3	2.6	7.7	31-Dec.-17	1st	CIM Group
CIM IV	2005	100	106.9	56.3	1.63	6.4	7.4	-1.1	31-Dec.-17	2nd	CIM Group
CIM I / II	2000	105.4	191	0	1.91	10.7	10.7	0	31-Dec.-17	1st	Not Disclosed



### CIM’s Responsible Contractor Policy

CIM’s Responsible Contractor Policy applies to construction, maintenance, and service contracts over \$100,000. The RCP provides that CIM “shall comply” with the Policy for all funds and investments in which CalPERS is an investor, and that it will use “good faith efforts” to comply with it for other investments. CIM’s website states the following,

*“Fair Wage & Fair Benefits – Contractor hereby certifies that all subcontractors and employees retained to perform Work or Services under this Agreement will receive a “fair wage” and “fair benefits” pursuant to the RCP. Fair benefits are evidenced by some of the following: employer-paid family health care coverage, pension benefits, apprenticeship programs and benefits paid for comparable work on comparable projects. Fair wage does not require the payment of “prevailing wages,” as defined by government surveys and laws. Instead, fair wage is evidenced by some of the following: local practices with regard to type of trade and type of project, local wage practices and labor market conditions.”*

*“Local, State and National Laws and Requirements - Contractor and its subcontractors shall observe all local, state, and national laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, health and occupational safety), and the RCP. Notwithstanding any provisions herein, Contractor shall perform its duties under the Agreement for the benefit of the Owner and CalPERS.”*

## **Is Responsible Contractor Policy Window Dressing Only?**

Despite the adoption of a Responsible Contractor Policy, CIM's activities in the New York City market paint a different picture. CIM's contracting practices establish that it needs to take steps to comply with the spirit, if not the letter, of its current RCP, and/or that it needs to adopt a more robust and expansive responsible contractor policy. The following are examples of instances where the entities that work on CIM's projects have fallen short of the social goals that every responsible contractor policy should promote.

### **ECD NY -- 85 Jay Street**

ECD NY was hired to perform foundation work at CIM's 85 Jay Street in Brooklyn. In October 2017, a woman who worked for ECD NY sued the company, alleging violations of federal, state, and city law for sex discrimination and retaliation.<sup>1</sup> This case is active.<sup>2</sup> In 2014, an ECD NY worker filed a lawsuit under the Fair Labor Standards Act and New York Labor Law, alleging ECD NY failed to pay overtime premiums.<sup>3</sup> The parties appeared to settle the case in 2015. ECD NY agreed to pay \$7,680 in back wages to a worker after the US Department of Labor found that ECD NY violated the Fair Labor Standards Act between February 2013 and March 2015. East Coast Drilling, an entity with the same CEO as ECD NY, along with other contractors, is facing a federal lawsuit filed by the NY State Attorney General for its alleged role in the illegal dumping of construction waste containing hazardous substances at Roberto Clemente Park, leading to the park being closed for over two years.<sup>4</sup>

### **NY Developers and Management -- 109 Montgomery Street**

NY Developers and Management was hired on CIM's 109 Montgomery Street project. In March, 2018, a construction worker was killed at 150-13 89th Avenue in Queens, another NY Developers and Management construction site. The worker, an employee of a subcontractor on the project, died after he was pinned by a forklift. According to a news article, this construction worker had predicted that he was "not going to survive" due to the dangers of the job.<sup>5</sup> 150-13 89th Avenue has experienced numerous safety violations and NYC Department of Buildings Stop Work Orders, including one in September 2017 after a concrete-covered plywood floor caved in causing a worker to fall from the eighth floor to the seventh floor.<sup>6</sup>

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<sup>1</sup> Complaint, *Thomas v. ECD NY Inc.*, filed Nov. 20, 2017,

<sup>2</sup> Docket Report, *Thomas v. ECD NY Inc.*, accessed June 19, 2018,

<sup>3</sup> Complaint, *Duta v. ECD NY Inc.*, filed Oct. 31, 2014,

<sup>4</sup> <https://www.nbcnewyork.com/news/local/Roberto-Clemente-Park-to-Reopen-After-Toxic-Dumping-Scandal-Suffolk-County-Islip--437362333.html>; <https://ag.ny.gov/press-release/ag-schneiderman-sues-waste-handling-companies-and-individuals-brentwood-dumping-which>. Docket report accessed June 19, 2018

<sup>5</sup> <https://nypost.com/2018/03/13/construction-worker-killed-in-forklift-accident-predicted-his-death/>.

<sup>6</sup> *Id.*

## **New Line Structures -- 85 Jay Street**

CIM's construction manager on 85 Jay Street is New Line Structures. New Line Structures' projects have a history of using unscrupulous subcontractors, such as Rockledge Scaffold<sup>7</sup> and Highbury Concrete.<sup>8</sup>

A recent death occurred on a New Line Structures project when Bruno Travalja, an owner of an architecture firm on the project, fell more than 40 stories after losing his footing while working at the former Flatotel Hotel at 135 W. 52nd St. His widow subsequently filed a lawsuit against several entities, including New Line Structures.<sup>9</sup>

New Line Structures sits on the New York Construction Alliance ("NYCA") Board of Directors.<sup>10</sup> The NYCA was founded to represent "open shop" construction companies. The NYCA opposed legislation passed in 2017, 1447-C, which sought to address the surge of construction related deaths in New York City. 1447-C will require workers to have at least 40 hours of safety training on construction sites by September 2020 (up from 10 hours at time of passage).<sup>11</sup>

## **New York Insulation -- Gilman Hall**

New York Insulation was hired to work at CIM's Gilman Hall Tower Project at 305 First Avenue in New York City. In 2012, New York Insulation and its officer Anthony Cardinale were debarred from New York public works projects for falsifying payroll records.<sup>12</sup> In 2015, the New York City Office of the Comptroller extended the debarment period until 2020, after finding another falsification of payroll records violation.<sup>13</sup> As part of a debarment settlement with the Comptroller, New York Insulation agreed to pay over \$141,000 in back wages, interest, and penalties for its failure to pay workers the prevailing wage.<sup>14</sup>

## **Alba Services -- Gilman Hall**

Alba Services was hired to work on CIM's Gilman Hall Tower Project at 305 1st Avenue in New York City. The New York State Workers Compensation Board debarred Alba Services Inc. from public work contracts for one year, beginning on May 18, 2017.<sup>15</sup> Alba Services, Alba Carting

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<sup>7</sup> After an investigation by the Department of Labor, Rockledge agreed to pay over \$60,000 in back wages owed to thirty-seven employees. OSHA has cited Rockledge numerous times since 2009.

<sup>8</sup> Since 2017, Highbury Concrete has faced three lawsuits filed by employee(s) claiming wage and hour violations. In July 2018, Highbury reached a settlement agreement with twenty-two workers, and although refusing to admit wrongdoing, agreed to pay \$625,000 (*Zamora et al v. Highbury Concrete*, 1:17-cv-02679-SJB). In another case, the court enforced an offer of judgment accepted by some of the plaintiffs, ordering the defendants to pay over \$300,000 (*Fabre et al v. Highbury Concrete Inc. et al*, 1:17-cv-00984-CBA-PK). The third lawsuit is still ongoing as of July 24, 2018 (*Cardenas v. Highbury Concrete Inc. et al*, 1:18-cv-03110-CBA-PK).

<sup>9</sup> <https://www.dnainfo.com/new-york/20170414/times-square-theater-district/architect-bruno-travalja-death-flatotel-chetrit-group-lawsuit/>.

<sup>10</sup> <http://www.nyconstructionalliance.org/about-us/>.

<sup>11</sup> <https://commercialobserver.com/2017/09/city-council-approves-construction-safety-training-bill/>.

and Demolition, and their shared CEO, are currently facing a lawsuit for wage and hour violations filed by workers who claim they are paid straight time in cash for time worked over 40 hours in a week.

### **Spring Scaffolding -- 25-30 Columbia Heights**

Spring Scaffolding was hired to work on CIM's 25-30 Columbia Heights in Brooklyn. In 2014 Spring Scaffolding, although refusing to admit any wrongdoing, agreed to pay \$560,000 to settle a class action lawsuit filed by workers who alleged overtime violations and prevailing wage violations.<sup>16</sup> Since 2012, Spring Scaffolding's practices have resulted in approximately 199 citations and \$155,720 in fines from NYC agencies. Many of these citations were for safety violations, including incidents where workers fell more than ten feet from a scaffold.<sup>17</sup>

### **L+M Development -- 265 Cherry Street**

CIM has partnered with L+M Development Partners on 265 Cherry Street in the Two Bridges area. L+M is a real estate company, specializing in developing, constructing, and operating affordable and other housing. L+M and its related entities benefit from generous development deals with New York City, and have received hundreds of millions of dollars in low interest loans, tax abatements/credits, and discounted land from the City. Potentially contributing to L+M's success in obtaining those development deals are the extensive political connections of L+M CEO and co-founder Ron Moelis and Chief Operating Officer Lisa Gomez.<sup>18</sup>

Alton Louis, an employee of subcontractor CRV Precast, died working on the roof of L+M Development's 149 Kent project. He had a reported body temperature of 106 degrees.<sup>19</sup> At another L+M Development site, OSHA cited RNC Industries for lack of fall protection after an employee was injured from a 15-foot fall.<sup>20</sup> L+M and its related entities have also used contractors with a history of unscrupulous business practices, such as wage theft, fraud, and/or unsafe working conditions. For example, MC&O has worked on multiple L+M projects. In 2013, the Business Integrity Commission denied MC&O's exemption/registration application to operate as a trade waste business, finding the company lacked "good character, honesty, and integrity," citing to the fact the MC&O's principal pleaded guilty to multiple charges, including failing to pay prevailing wages and fraud.<sup>21</sup> According to a 2014 news article, "MC&O has been hit with \$266,000 in federal Occupational Safety and Health Administration fines for dangerous

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<sup>18</sup> [http://www.crainsnewyork.com/article/20170611/REAL\\_ESTATE/170609858/ron-moelis-is-the-king-of-affordable-housing-but-his-ties-to-nyc-deputy-mayor-alicia-glen-made-him-a-target](http://www.crainsnewyork.com/article/20170611/REAL_ESTATE/170609858/ron-moelis-is-the-king-of-affordable-housing-but-his-ties-to-nyc-deputy-mayor-alicia-glen-made-him-a-target);  
<http://www.nydailynews.com/news/politics/de-blasio-affordable-housing-appointees-ties-developers-article-1.1616075>.

<sup>19</sup> <http://www.crainsnewyork.com/article/20161209/BLOGS04/161209858/worker-falls-and-dies-at-city-backed-affordable-housing-site-of-domino-sugar-factory-the-development-is-owned-by-two-trees-management-co-and-will-include-104-affordable-apartments>;  
[https://www.osha.gov/pls/imis/establishment.inspection\\_detail?id=1075960.015](https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1075960.015);  
[http://www.nytimes.com/2016/05/03/nyregion/as-construction-deaths-rise-a-mass-for-fallen-workers-grows.html?\\_r=0](http://www.nytimes.com/2016/05/03/nyregion/as-construction-deaths-rise-a-mass-for-fallen-workers-grows.html?_r=0).

<sup>20</sup> [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=NEWS\\_RELEASES&p\\_id=24849](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=24849).



work-site conditions in 14 incidents since 2004, starting with a worker who fell 64 feet to his death at a job in the Bronx. To date the firm has paid \$149,000 to settle the cases. L+M recently hired MC&O for a luxury rental building in Long Island City — even after its owners pleaded guilty in 2012 to criminal charges of tax evasion and paying workers off the books. In October, OSHA cited the firm for job safety violations at that site, but they settled without demanding a fine.”<sup>22</sup>

### **Conclusion**

CIM Group, acting on behalf of its investors, continues to employ a “race to the bottom” procurement strategy that undermines the safety, wages, and benefits of construction workers in New York City.

### **Actions Needed:**

- 1) Potential investors should be aware that any marketing that suggests CIM is “labor friendly” is not credible.
- 2) Investment consultants should recommend CIM adopt a more robust responsible contractor policy as its current Policy is insufficient.
- 3) Current investors should ask for stronger union commitments from CIM in the New York City market, including on the Two Bridges project on 265 Cherry Street, to reduce risk and ensure high quality construction standards are followed.

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<sup>22</sup> <http://www.nydailynews.com/new-york/nyc-crime/city-hires-housing-firms-cheat-workers-wages-article-1.1754687>.