

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 1839/September 23, 2014

ADMINISTRATIVE PROCEEDING  
File No. 3-15918

In the Matter of  
  
DENNIS J. MALOUF

ORDER QUASHING IN PART AND  
MODIFYING SUBPOENA REQUEST TO  
NATIONAL ADVISORS HOLDINGS, INC.  
D/B/A NATIONAL ADVISORS TRUST  
COMPANY, FSB

The Securities and Exchange Commission (Commission) commenced this proceeding on June 9, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Section 8A of the Securities Act of 1933; Sections 15(b), 15C(c), and 21C of the Securities Exchange Act of 1934; Sections 203(f) and 203(k) of the Investment Advisers Act of 1940; and Section 9(b) of the Investment Company Act of 1940. The hearing is scheduled to commence on November 3, 2014.

On August 28, 2014, this Office received Respondent Dennis J. Malouf's (Malouf) Motion for Issuance of Subpoenas Duces Tecum Without Deposition (Motion for Issuance) pursuant to the Commission's Rules of Practice (Rule) 154 and 232. *See* 17 C.F.R. §§ 201.154, .232. The Motion for Issuance included a request for issuance of a subpoena to National Advisors Holdings, Inc., d/b/a National Advisors Trust Company, FSB (NAH), and was not opposed by the Division of Enforcement. Motion for Issuance at 6 & Ex. C. On August 28, 2014, I granted the Motion for Issuance as to NAH and issued the requested subpoena (Subpoena). *Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1740, 2014 SEC LEXIS 3087.

The Subpoena requests production of twelve categories of documents. Subpoena at Ex. A. On September 15, 2014, NAH filed an Application to Quash Subpoena Issued on August 28, 2014 to National Advisors Holdings, Inc. d/b/a National Advisors Trust Company (NAH Application). NAH represented that it is a holding company of wholly-owned subsidiary National Advisors Trust Company (NATC) and it and NATC do not have any documents that would be responsive to the Subpoena because both are far removed from the subject matter of this dispute.<sup>1</sup> NAH Application at 1-2 & n.1. NAH argues that compliance with the Subpoena creates an unreasonable and undue burden on NAH and NATC because the temporal scope of

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<sup>1</sup> I expect NAH and NATC to jointly comply with the Subpoena as modified or quashed in this Order because Malouf directed the Subpoena to NATC as a "d/b/a" of NAH.

the Subpoena is overbroad, the mandated response time is too short, the requests seek documents that are not relevant to the underlying proceeding, and the requests are overbroad. *Id.* at 2-3.

On September 19, 2014, this Office received Malouf's Opposition to the NAH Application (NAH Opposition). Malouf argues that the NAH Application was not timely filed pursuant to Rule 232(e)(1). NAH Opposition at 2-3. Rule 232(e)(1) permits an application to quash or modify a subpoena to be filed "prior to the time specified [in the subpoena] for compliance, but in no event more than 15 days after the date of service of such subpoena." 17 C.F.R. § 201.232(e)(1). It is not clear from the record when the NAH Application was due. Malouf asserts that NAH's deadline to object was September 8, 2014. NAH Opposition at 2. However, NATC apparently received the Subpoena late Friday afternoon, September 5, 2014. NAH Opposition at Ex. A. Assuming this date to be the service date, I find it unduly burdensome for NAH to have responded by the following Monday and I therefore address the NAH Application on its merits.

Malouf represents that the NAH Application fails to disclose discussions between the parties. NAH Opposition at 1. Malouf explains that Joseph Morsman, Senior Vice President and Chief Compliance Officer for NATC, called on September 8, 2014, to request an extension and stated that NATC was in the process of gathering responsive documents and would attempt to provide them as soon as possible. *Id.* at 1 and Ex. A. According to Malouf, NATC did not raise any objections to the subpoena during the initial telephone call or in a follow-up email. *Id.* at 2 and Ex. A. On September 17, 2014, Malouf spoke with outside counsel for NATC to attempt to resolve the issues raised by the NAH Application and offered a compromise "substantially similar to compromises offered to other subpoenaed entities," but Malouf has not yet received a response. *Id.* at 2.

I applaud counsels' meet-and-confer efforts, even though they were ultimately unsuccessful. The first nine requests of the Subpoena are substantially the same as the nine subpoena requests issued to Fidelity Brokerage Services, LLC (FBS), which I quashed and modified in part on September 18, 2014. *See Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1816, 2014 SEC LEXIS 3459. Due to these similarities, it is reasonable to modify and quash the first nine NAH Subpoena requests in the same manner as the FBS subpoena requests.

The information requested in the first, second, third, and seventh requests may be produced in spreadsheet form, with personal identifying information redacted, and may be limited to the period January 1, 2008, to May 31, 2011. Trades predating January 2008 or postdating May 2011 are apparently not relevant in this proceeding, because the OIP alleges unlawful trades occurred only from January 2008 through May 2011. OIP at 3. The temporal scope of these requests will be narrowed accordingly. I will quash the fifth and sixth requests, without prejudice to renewal at a later date, because it is more efficient to postpone production of the fifth and sixth requests, which seek essentially all correspondence between NAH and various persons affiliated with UASN, Inc., until after Malouf reviews the spreadsheet containing information to satisfy the first, second, third, and seventh requests. The fourth, eighth, and ninth requests of the Subpoena will be quashed.

This leaves the tenth, eleventh, and twelfth requests. Broadly speaking, the tenth and eleventh requests seek information relating to Kirk Hudson and Joseph Kopczynski's (Kopczynski) appointment to the board of NATC, and the twelfth request seeks information relating to Kopczynski's ownership interest in and/or control of NATC. Subpoena at Ex. A. Malouf does not explain the relevance of requests ten, eleven, or twelve, and NAH simply objects to the subpoena as irrelevant, overly broad, and creating an undue burden, so the relevance of these requests are unclear. However, it seems likely that these requests will provide impeachment evidence. It is not clear that the number of documents that may be responsive to this request would be unduly burdensome for NAH and NATC. On the whole, these last three requests appear to be reasonable and will not be modified or quashed. In view of the imminence of the hearing, NAH shall have until October 2, 2014, to produce responsive documents.

Finally, NAH opposes production of these documents absent an appropriate protective order. *Id.* at 3. The proposed spreadsheet will be redacted of personal information, which should satisfy NAH's concerns about confidentiality. If not, NAH may move for an appropriate protective order. *See* 17 C.F.R. § 201.322.

### **Order**

It is ORDERED that National Advisors Holdings, Inc. d/b/a National Advisors Trust Company, FSB's Application to Quash Subpoena Issued on August 28, 2014 to National Advisors Holdings, Inc. d/b/a National Advisors Trust Company is GRANTED IN PART as set forth above.

It is further ORDERED that Respondent's Subpoena Duces Tecum Without Deposition, issued to National Advisors Holdings, Inc. d/b/a National Advisors Trust Company, FSB is MODIFIED as follows and otherwise QUASHED: the information requested in the first, second, third, and seventh subpoena requests may be produced in spreadsheet form, with personal identifying information redacted, may be limited to the period January 1, 2008, to May 31, 2011; the information requested in the tenth, eleventh, and twelfth subpoena requests shall be produced as fully described in Respondent's Subpoena; and documents responsive to these requests, as modified, shall be produced no later than close of business on October 2, 2014. Upon receipt, Respondent shall promptly make the produced documents available to the Division of Enforcement for inspection and copying.

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Cameron Elliot  
Administrative Law Judge