

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2189/January 8, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-15918

In the Matter of  
  
DENNIS J. MALOUF

ORDER ON STIPULATIONS AND  
TRANSCRIPT CORRECTIONS

The Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings on June 9, 2014, 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. A hearing was held from November 17, 2014, through November 25, 2014.

During the hearing, the parties and I conferred on a number of factual issues, with the parties ultimately agreeing and stipulating to two hundred eighty findings of fact. *See* Hearing Transcript at 1652-1906. In a post-hearing order, I encouraged the parties to continue to strive in good faith to reach agreement on additional stipulations. *See Dennis J. Malouf*, Admin. Proc. Rulings Release No. 2059, 2014 SEC LEXIS 4515 (Nov. 28, 2014).

On December 18 and 19, 2014, Malouf and the Division filed their additional proposed stipulations of fact and conclusions of law, respectively. These proposed stipulations were discussed at a post-hearing conference held on December 19, 2014. On January 5, 2015, the parties filed a compilation of all their agreed to stipulations reached (1) in advance of the hearing; (2) following the presentation of evidence at the hearing on November 24, 2014; (3) at the telephonic post-hearing conference held on December 19, 2014; and (4) pursuant to additional stipulations Malouf submitted to the Division on January 2, 2015.

I commend the parties on reaching agreement on the stipulations, which I find are supported by a preponderance of the evidence. Accordingly, I ORDER that the following findings of fact (FOF) and conclusions of law (COL) are binding on the parties pursuant to 17 C.F.R. § 201.324:

- FOF 1. Dennis J. Malouf, age 55, is a resident of Albuquerque, New Mexico. Malouf was the chief executive officer and majority owner of UASNM from September 2004 until May 2011, when he was terminated. He is currently the sole owner and president of an investment adviser registered with the State of New Mexico.
- FOF 2. UASNM, Inc., is a New Mexico corporation located in Albuquerque, New Mexico, that registered as an investment adviser with the Commission on September 4, 2004. UASNM provides discretionary advisory services primarily to individuals, charitable organizations, and employee benefit plans. UASNM's most recent Form ADV reported approximately \$275 million in assets under management. UASNM is named as a respondent in a separate administrative proceeding relating to the misconduct described in this Order.
- FOF 3. In 2004 Malouf purchased a majority interest in UASNM, and Hudson purchased a minority interest in UASNM, and registered the firm as an investment adviser with the Commission. At that time Malouf was also associated as a registered representative and owned a branch of a broker-dealer, Raymond James Financial Services, Inc. (broker-dealer). The broker-dealer branch owned by Malouf subleased and occupied a portion of UASNM's office space.
- FOF 4. In 2007, broker-dealer became concerned about potential conflicts of interest and supervision risks, among other issues, arising from Malouf's work at UASNM, and asked him to choose between associating with UASNM or broker-dealer. Malouf decided to continue his advisory work at UASNM and to terminate his association as a registered representative and owner of a branch office of broker-dealer.
- FOF 5. As a result, at the end of 2007, Malouf terminated his registration with broker-dealer and he transferred his broker-dealer customers either to UASNM or to the new branch manager. Branch manager continued to operate the broker-dealer office within UASNM's office space until June 2011.
- FOF 6. Malouf was considered the person with the most experience with bonds within UASNM, based upon his prior experience in trading bonds. And as a result, he handled most of the bond trading on behalf of UASNM clients. From 2008 to 2011, Malouf selected branch manager and broker-dealer to execute the majority of bond transactions that he directed on behalf of UASNM clients. Between January 2008 and May 2011, UASNM placed over 200 bond trades through broker-dealer, representing approximately

ninety percent of its bond trading in this period. During this period, Malouf, through UASNM, effected transactions in securities, including U.S. Treasuries, federal agency bonds, and municipal bonds.

- FOF 7. Between January 2008 and May 2011, branch manager earned approximately \$1.1 million in commissions from UASNM bond transactions. Then, pursuant to an agreement with Malouf, branch manager paid approximately \$1.1 million to Malouf.
- FOF 8. At least some of UASNM's ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his Raymond James Financial Services (RJFS) branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale.
- FOF 9. Item 12 of UASNM's Form ADV Part II, dated April 12, 2010, disclosed that the broker recommended by UASNM was not "based upon any arrangement between the recommended broker and UASNM," and, instead, was "dependent upon a number of factors including the following: Trade execution, custodial services, trust services, recordkeeping and research, and/or ability to access a wide variety of securities. UASNM reviews, on a periodic and systematic basis, its third-party relationships to ensure it is fulfilling its fiduciary duty to seek best execution on client transactions."
- FOF 10. Item 12 of UASNM's Form ADV, Part II, dated April 12, 2010, affirmatively represented that "employees of UASNM are not registered representatives of Schwab, Raymond James or Fidelity, and do not receive any commissions or fees from recommending these services."
- FOF 11. Items 10 and 12 of UASNM's Form ADV Part 2A, dated March 2011, disclosed for the first time that Malouf had sold his interest in a broker-dealer branch in exchange for a series of payments, and that, as a result of that sale, an incentive could exist for UASNM to utilize broker-dealer to generate revenue to fulfill the payments due to Malouf.
- FOF 12. At times, between 2008 and 2011, UASNM's website made the following statements:
- "Uncompromised objectivity through independence, UASNM is not owned by any product, company nor compensated by any commissions. This allows us to provide investment advice devoid of conflicts of interest. UASNM may place trades through multiple sources ensuring that the best cost/service/execution mix is met for its clients."

“We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients portfolios.”

- FOF 13. Malouf was the lead salesman for UASNМ, and he was familiar with at least some of the contents of its website.
- FOF 14. Respondent, Dennis J. Malouf, age 55, was the chief executive officer, president, and majority owner of UASNМ from September 2004 until May 13, 2011, when he was terminated. He is currently the sole owner and president of NM Wealth Management, LLC, an investment adviser registered with the State of New Mexico with approximately \$26 million in assets under management. Malouf was a registered representative associated with RJFS from February 1999 through December 2007.
- FOF 15. 1. UASNМ, Inc., is a New Mexico corporation located in Albuquerque, New Mexico that registered as an investment adviser with the Commission on September 4, 2004. UASNМ, also known as “Universal Advisory Services,” provides discretionary advisory services primarily to individuals, charitable organizations, and employee benefit plans. UASNМ’s most recent Form ADV, dated March 31, 2014, reported approximately \$275 million in assets under management.
2. Raymond James Financial Services, Inc., is a Florida corporation formed in 1999. RJFS, through a predecessor, has been registered with the Commission as a broker-dealer since 1974, and is a member of FINRA.
3. Maurice Lamonde was a registered representative associated with RJFS from March 2000 until August 2011, and, from January 2008 through August 2011, he owned an Albuquerque office of RJFS. He died unexpectedly on April 4, 2014, at age sixty-five.
- FOF 16. Joseph Kopczynski, age 65, is currently the chairman of UASNМ’s board of directors and its chief compliance officer. He started the UASNМ business and sold the firm to Malouf, his then son-in-law, and Kirk Hudson, in September of 2004, but maintained a one-percent ownership interest. Kopczynski was UASNМ’s CCO from 2004 to 2010, relinquished that position to Malouf in January of 2011, and resumed the position in June 2011, after Malouf was terminated.
- FOF 17. Kirk Hudson, age 52, held a minority ownership interest in UASNМ from August 2004 to 2011, and is currently UASNМ’s chief financial officer and chief investment officer.

- FOF 18. In 2004, Malouf purchased a majority interest in UASNM from Kopczynski. At that time, Malouf also owned a branch office affiliated with RJFS and was a registered representative for RJFS. UASNM and the RJFS branch owned by Malouf were located in the same physical office space, with the RJFS branch renting a few cubicles in one section of the office.
- FOF 19. In 2007 RJFS became concerned about potential conflicts, supervision risks and other issues arising from Malouf's work at UASNM, and asked him to choose between associating with UASNM or RJFS. Malouf decided to continue his advisory work at UASNM and to stop working as a registered representative for RJFS. As a result, at the end of 2007, Malouf terminated his registration with RJFS and he transferred his RJFS customers either to UASNM or to the new owner of the RJFS branch, Lamonde. Lamonde continued to operate the RJFS office within UASNM's office space until June 2011, when UASNM required Lamonde to find a new office location.
- FOF 20. From January 2008 through May 2011, Lamonde earned \$1,074,454 in commissions from RJFS on UASNM bond trades. Lamonde paid \$1,068,084 to Malouf.
- FOF 21. Lamonde has testified that Malouf would request payment from him shortly after executing a bond trade with him. Others also recall Malouf requesting payments from Lamonde.
- FOF 22. UASNM had discretionary authority over client accounts and, therefore, determined to make bond trades on behalf of its clients and selected a broker-dealer for trade execution. Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers and would usually select the broker-dealer through which bond trades were executed by Malouf.
- FOF 23. RJFS trade blotter, Exhibit 29, shows that from January 2008 to May 2011 UASNM traded \$140,819,708.15 in bonds through RJFS.
- FOF 24. UASNM's bond trades were in U.S. Treasury, federal agency, and municipal bonds. The trades were typically made in UASNM DVP accounts at RJFS and then allocated after the purchase to different client accounts.

- FOF 25. A delivery versus payment, DVP account enabled Malouf and others to buy and sell securities from RJFS even though his clients' assets were custodied at other firms. For example, if Malouf and others bought a U.S. Treasury bond on behalf of numerous clients, he combined the order into a single purchase in a UASNM DVP account -- e.g., \$1 million -- and then allocated the purchase among various clients after the trade was executed -- e.g., \$100,000 to one client, \$50,000 to another client, et cetera. UASNM had separate DVP accounts with RJFS for each of its major custodians of its clients. (Schwab Fidelity and National Advisors Trust).
- FOF 26. Malouf disputes the existence of the oral agreement with Lamonde, and instead claims that he entered into a written "Purchase of Practice Agreement" (PPA) with Lamonde at the end of 2007 whereby he sold his branch and certain brokerage customer accounts to Lamonde. The PPA stated in relevant part that Malouf was transferring to Lamonde the "exclusive right to provide investment advice and services . . . to all of Seller's accounts." The PPA further purported to attach "Exhibit A," which was to "contain the names of all of his/her existing clients." Under the PPA, "[i]n consideration of the Seller's assignment of the assigned accounts, Buyer agrees to pay Seller 40% of all commissions and securities related fees received by Buyer during the production period beginning January 2, 2008, through and including December 31, 2012."
- FOF 27. In a May 15th 2009 e-mail from Lamonde to his supervisor at RJFS, Kirk Bell, Lamonde wrote, in response to a request for the agreement, "I am working on the purchase agreement and will have Sarah take a look at it to make sure it's okay." On June 9th 2009, Lamonde wrote to Bell, "I am still working on the agreement and will send it as soon as we finish it."
- FOF 28. Mr. Malouf argues that Lamonde was simply prepaying what he owed for the branch.
- FOF 29. Items 8 and 9 of the UASNM Forms ADV Part II, dated February 4, 2008, August 20, 2008, and December 1, 2008, disclosed that employees of UASNM were or may be registered representatives of RJFS and could receive commissions.
- FOF 30. Items 8 and 9 of UASNM's Forms ADV Part II, dated October 1, 2009, January 1, 2010, and April 12, 2010 removed the prior disclosure regarding the UASNM employee's status as a registered representative of RJFS but were otherwise the same as the prior versions.

- FOF 31. Items 10 and 12 of UASNМ's Form ADV Part 2A, dated March 2011, disclosed that Malouf had sold his interest in a RJFS branch in exchange for a series of payments, and that an incentive may exist for UASNМ to utilize RJFS to generate revenue that may be utilized to make payments to Malouf.
- FOF 32. Malouf, Kopczynski, Hudson, and outside compliance consultant ACA each were involved to varying degrees in preparing or reviewing UASNМ's Forms ADV from 2008 through May 2011.
- FOF 33. Malouf performed at least a cursory review of some Form ADVs focusing on disclosures relating to himself and RJFS.
- FOF 34. In 2008 Kopczynski and Hudson understood that Malouf had sold his RJFS branch to Lamonde, but they were not aware of the specific terms of that sale. Hudson learned in 2008 or 2009 that Malouf was receiving ongoing payments from Lamonde, but he assumed that such payments were being made in connection with some type of financing or prearranged installment payment schedule.
- FOF 35. Each year ACA performed an on-site exam of UASNМ and used that process to recommend potential updates or changes to UASNМ's Form ADV.
- FOF 36. In June 2010 Malouf told ACA in an interview that he was continuing to receive ongoing payments from Lamonde.
- FOF 37. Malouf solicited and met with clients and made investment recommendations. He was a member of UASNМ's investment committee that evaluated clients' investment options. Under UASNМ's discretionary authority, Malouf made the majority of decisions regarding at least his specific clients' bond transactions.
- FOF 38. Between 2008 and 2011 Malouf used Lamonde's branch of RJFS to execute bond trades on behalf of UASNМ clients.
- FOF 39. The Division's expert in this matter, Dr. Gary Gibbons, identified eighty-one trades in Treasury and federal agency bonds during the period in question. Dr. Gibbons excluded Corporate and municipal bond trades. The trades represented \$95,954,806 in principal amount and generated \$833,798 in commissions, which, on a dollar weighted average basis, is 87.28 basis points, or .8728 percent. Dr. Gibbons utilized his experience and other

sources to opine that Treasury and agency bond trades such as these should have been subject to commissions in the range of 10 to 70 basis points.

- FOF 40. Mr. McGinnis is a consultant to Capital Forensics that was hired by UASNM in its lawsuit against Malouf to evaluate the evidence related to UASNM's bond trading and opine as to what would be the compliance response to UASNM.
- FOF 41. Malouf's own designated expert, Jerry DeNigris, found that UASNM customers' bond trades incurred a similar average commission of 81.8 basis points. DeNigris offers no opinion as to what a reasonable commission would be on the bond trades at issue or whether UASNM customers paid excessive commissions.
- FOF 42. DeNigris states in his rebuttal report that the "RJFS markup guidelines are typical for broker-dealers in the securities industry," and "none of the agency or treasury bond transactions in this matter exceeded the RJFS markup policy." The RJFS guidelines DeNigris refers to set forth maximum "retail" markups of up to 300 basis points.
- FOF 43. Malouf and Lamonde also both testified that they would never charge more than a hundred basis points on a bond trade, yet the evidence will show that some bond trades run through RJFS were subject to commissions in excess of one percent. Malouf's own proffered expert, DeNigris, includes multiple bond trades through RJFS that exceeded this purported one percent limit in his Tab 1, including three trades with commissions of approximately fifty percent more than that amount.
- FOF 43-2. Malouf's regular business involved meeting with and actively soliciting clients, providing advice to investors as to the merits of securities.
- FOF 44. Lamonde referred to the payments he made to Malouf as "commissions" on his 2008, 2009, and 2010 tax returns. Lamonde provided Malouf with IRS Form 1099s for the payments.
- FOF 45. Malouf's draft tax returns for 2008 and 2009 continued to state that Malouf was operating as an "investment broker" for RJFS (the same as his draft 2005 to 2007 tax returns).
- FOF 46. Malouf was not registered with the Commission as a broker or dealer between 2008 and 2011.

- FOF 47. Malouf's draft tax returns for 2008 and 2009 continue to state that Malouf was operating as an investment broker for RJFS and reflected deductions for a variety of expenses.
- FOF 48. Malouf had provided his brokers with Form 1099s prior to selling the branch to Lamonde.
- FOF 48-2. Dennis Malouf (Malouf) sold branch 4GE (4GE) to Maurice LaMonde (Lamonde) – the Division stated in its opening that the sale of 4GE to LaMonde in 2008 was a fact that was not in dispute, and referred to the transaction several times as a “sale.”
- FOF 49. Prior to June 2010 Michael Ciambor (Ciambor) did not ask for a copy of the Purchase of Practice Agreement (PPA) from Malouf or anyone else.
- FOF 50. Joseph Kopczynski (Kopczynski), Kirk Hudson (Hudson), and Matt Keller (Keller) knew 4GE had been sold to LaMonde at the beginning of 2008.
- FOF 51. Kopczynski suspected that 4GE was sold pursuant to installment agreement, that such an arrangement is a method of selling a business, and that Malouf purchased UAS from him in 2004 pursuant to an installment arrangement.
- FOF 52. Kopczynski did not ask Malouf for a copy of the PPA in at least 2008 or 2009.
- FOF 53. Hudson knew that payments being made by LaMonde to Malouf from 2008 or 2009 forward, including during periods when all references to RJFS had been removed from the UASNM Forms ADV.
- FOF 54. Hudson signed some of the Forms ADV.
- FOF 55. The UASNM compliance manual at page 53 (B) 2<sup>nd</sup> paragraph provides that the Chief Compliance Officer (CCO) is responsible for ensuring that Parts 1A and Part II of the Form ADV are properly maintained and disseminated. CCO will periodically review the Form ADV to ensure that it is accurate and complete.

Such a review is most pertinent given changes in: securities laws; industry practices; and UASNM's advisory products and services.

The CCO may discuss disclosure issues with Employees to ensure that current disclosures are consistent with UASNM's practices.

Employees are encouraged to review UASNM's disclosure documents and bring to the CCO's attention any disclosures that may require amendment/updating.

- FOF 56. The UASNM compliance manual page 75 section (C) provides that all marketing materials must be submitted to the CCO for approval prior to dissemination.
- FOF 57. Kopczynski acknowledged he had responsibility for ensuring that Parts 1A and Part II of the Form ADV were properly maintained and disseminated.
- FOF 58. Kopczynski acknowledged that he had responsibility for periodically reviewing the Form ADV for accuracy and completeness.
- FOF 59. In 2008 or 2009, Hudson assumed payments between LaMonde and Malouf may have been part of an "earn out."
- FOF 60. Malouf sometimes asked LaMonde "where is my check" in the presence of at least Hudson or Calhoun.
- FOF 61. None of the checks written from LaMonde to Malouf state that they are "commissions."
- FOF 62. Hudson did not ask for a copy of the PPA at least in 2008 or 2009.
- FOF 63. Judith Owens (Owens) signed an investment management services agreement acknowledging that she had received and read Part II of the February 4, 2008 UASNM Form ADV.
- FOF 64. The February 4, 2008 ADV Part II disclosed that Malouf owned the RJFS branch and may receive commissions on transactions directed there for UASNM customers.
- FOF 65. Carl Shaw (Shaw) believes Malouf is loyal, trustworthy, and has always acted with his best interest in mind.
- FOF 66. Shaw did not care whether the cost for transactions placed in his account was 1/2% vs. 1%.
- FOF 67. Shaw is not currently a customer of Malouf but would allow Malouf to manage his investments in the future.

- FOF 68. Shaw's son and daughter-in-law are currently customers of Malouf, Shaw recommended Malouf to them, and he is comfortable that Malouf is their investment adviser.
- FOF 69. RJFS actually transferred clients to LaMonde and Malouf pursuant to a list on or around December 31, 2007.
- FOF 70. A List of customers was attached to email communications between RJFS and Malouf on January 2, 2008.
- FOF 71. The commissions earned by LaMonde on bond trades placed for UASNM and the payments that LaMonde made to Malouf are not exactly equal.
- FOF 72. On a quarterly basis in 2008 and 2009, the amounts of the payments by LaMonde to Malouf at times exceeded the amount of the commissions received by LaMonde.
- FOF 72-2. On a quarterly basis in 2010, the amounts of the payments by LaMonde to Malouf are at times less than the amount of commissions received by LaMonde.
- FOF 73. Kopczynski had no knowledge of the causes of the "erratic behavior" he said he observed in Malouf.
- FOF 74. Keller placed bond trades at times on his own without the involvement of Malouf.
- FOF 75. Hudson placed at least four or five bond trades on his own without the involvement of Malouf.
- FOF 76. Various witnesses have estimated that Malouf placed between 60% and 95% of the bond trades.
- FOF 77. Malouf directed no more than forty-eight to seventy-seven of the eighty-one trades analyzed by Dr. Gibbons (60% and 95%).
- FOF 78. UASNM, at the direction of Kopczynski and Hudson, told UASNM customers in a June 2014 letter that Malouf breached his fiduciary duty to them; that letter attached a UASNM Consent Order.
- FOF 79. Neither UASNM, Kopczynski, nor Hudson stated in the June 2014 letter to customers that UASNM was found to have breached its fiduciary duty to

customers. The attached UASNM Consent Order indicated that UASNM breached its fiduciary duty to its customers.

- FOF 80. Gibbons' specific "ranges" of allegedly acceptable commissions are not published by the SEC or any industry organization.
- FOF 81. Gibbons' opinion is that best execution should be determined on a real time trade-by-trade bases.
- FOF 82. Wolper's opinion is that best execution should be determined based at least in part on a periodic and systematic evaluation as reflected in 1986 SEC Release and in the SIFMA Best Execution Guidelines for Fixed Income Securities (Ex. 450).
- FOF 83. Malouf brought to the attention of UASNM that his college degree information on the Form ADV was inaccurate and needed to be updated.
- FOF 84. [Intentionally Left Blank]
- FOF 85. ACA advised UASNM in the September 2007 Annual Report that the language in its marketing materials "void of conflicts of interest" was potentially misleading, and recommended removing it.
- FOF 86. ACA advised UASNM in the December 2009 Annual Report that the language on its website "void of conflicts of interest" was potentially misleading, and recommended removing it.
- FOF 87. The "void of conflicts of interest" language continued to appear on the UASNM website and in marketing materials in 2008-2010.
- FOF 88. Hudson is the obligor on a personal guarantee on a promissory note owed by UASNM to Kopczynski, which has a current balance due of approximately \$700,000.
- FOF 89. Kopczynski agreed to forbear on the note for a period of time after Malouf's termination as long as Malouf did not rejoin UASNM, among other conditions.
- FOF 90. Keller is a minority shareholder of UASNM.
- FOF 91. Paula Calhoun is an employee at will of UASNM.

- FOF 92. Paula Calhoun is a workplace friend of Aubrey Kopczynski, daughter of Joseph Kopczynski.
- FOF 93. ACA's engagement agreement obligated it to conduct mock SEC compliance audits of UASNM annually.
- FOF 94. ACA advised UASNM annually that it was in fact conducting mock SEC compliance exams.
- FOF 95. UASNM paid ACA between \$10,000 and \$15,000 annually to conduct mock SEC compliance exams, among other things.
- FOF 96. The scope of ACA's engagement included best execution.
- FOF 97. Kopczynski relied on ACA to assist UASNM with complying with its best execution obligation.
- FOF 98. Prior to 2011, Malouf relied on Kopczynski as CCO to ensure the firm was complying with its best execution obligation.
- FOF 99. Prior to 2011, Malouf relied on ACA to assist Kopczynski to ensure the firm was complying with its best execution obligation.
- FOF 100. Prior to June 2010, ACA advised UASNM and Malouf each year that UASNM was complying with its best execution obligation and never advised UASNM of any deficiencies in best execution.
- FOF 101. Prior to May 2011, Kopczynski never advised Malouf of any deficiencies in best execution.
- FOF 102. Prior to January 2011, Malouf relied on Kopczynski as CCO to ensure that UASNM's Forms ADV accurately reflected material facts.
- FOF 103. Ciambor believes an actual SEC examiner would have asked Malouf for a copy of the PPA.
- FOF 104. Ciambor believes that an actual SEC examiner would have asked Malouf about the terms of the sale of the RJFS branch.
- FOF 105. Ciambor believes an actual SEC examiner would have undertaken to determine whether Malouf was receiving ongoing payments from LaMonde.

- FOF 106. Hudson believed that the sublease arrangement between UASNM and RJFS/LaMonde created a potential conflict of interest which should have been disclosed.
- FOF 107. Hudson and UASNM did not disclose the sublease arrangement in Forms ADV.
- FOF 108. McGinnis acknowledged that it can be permissible at least to delegate certain compliance duties to a CCO.
- FOF 109. McGinnis delegated certain compliance duties to a CCO when he was a chief executive officer of a registered investment advisor.
- FOF 110. Ciambor acknowledged that the CCO has responsibility for administering the firm's compliance program.
- FOF 111. McGinnis was not asked to identify trades directed by Malouf.
- FOF 112. Gibbons agreed that his range for markups is not absolute.
- FOF 113. UASNM had discretionary authority over its client's funds.
- FOF 114. Malouf and Hudson purchased the majority of shares of UAS in August of 2004, after which Malouf owned 59.5 %, Hudson owned 39.5%, and Kopczynski owned 1%.
- FOF 115. Until late 2009, Peter Lehrman was a registered representative of Raymond James (RJ).
- FOF 116. Monica Villa came to UASNM from the Raymond James branch 4GE in 2007 and was involved in implementing and allocating bond trades.
- FOF 117. With regard to bonds, UASNM typically invested in treasury and agency securities, mostly of seven years or less maturity, as well as some municipal bonds.
- FOF 118. Malouf's involvement would include selecting the broker to purchase or sell the bonds through for his trades.
- FOF 119. Exhibit 30 is a list of UASNM bond trades from the time UASNM took over the business (August 17, 2004) until Mr. Malouf was terminated (May 13, 2011).

- FOF 120. Hudson created Exhibit 30 in connection with the New Mexico litigation in 2011.
- FOF 121. The Non-RJ BOND TRADES titled pages of Exhibit 30 represent bond transactions executed by a broker other than RJ.
- FOF 122. The trades titled RJ TRADE AWAY TRANSACTIONS UNDER REVIEW in Exhibit 30 (pages 52-56 of the Exhibit) were a spreadsheet created to send to Chris Genovese at fixed income securities in order to try to get an evaluation of whether the trades were reasonable.
- FOF 123. Exhibit 29 is the payroll report or commission report for account 44Y5 at Raymond James' branch 4GE for the period January 24, 2008 to April 29, 2011, that reflects commissions earned on bond trades made through that account.
- FOF 124. Exhibit 29 reflects commissions paid on bond trades that can be found in Exhibit 30.
- FOF 125. Malouf's partner, Hudson, believed Malouf devoted one third or more of his time to activities outside of UASNM business during the 2008-2011 time period.
- FOF 126. Prior to 2010, Hudson, Kopczynski, and Keller had not seen a written PPA regarding Malouf's sale of his RJ branch to Lamonde.
- FOF 127. Hudson viewed Malouf's arrangement with Lamonde as a potential conflict of interest.
- FOF 128. In connection with the SEC's investigation, UASNM looked through its files to see if it had a copy of the PPA or Exhibit A anywhere in its files and it did not find one.
- FOF 129. UASNM marketed itself as "independent," meaning that they were fee only and did not take commissions.
- FOF 130. At UASNM, business development was an area of Malouf's expertise.
- FOF 131. Exhibits 66, 68, and 69 contain UASNM's website address and the language found on those exhibits that "We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity" and "UAS is not owned by any product company nor compensated by any commissions. This allows us to provide investment advice void of conflicts

of interest” were very common statements UASNM would use in marketing.

- FOF 132. Hudson has no reason to doubt that these statements were present on UASNM’s website in 2008-2010, and believes they were on the site.
- FOF 133. UASNM’s process with regard to best execution was to utilize a three bid process where they would get if they could three bids on any security.
- FOF 134. In Hudson’s opinion, Malouf’s arrangement with Lamonde should have been disclosed to UASNM customers.
- FOF 135. About a week after terminating Malouf, Hudson sent certain bond trades to Chris Genovese to review for best execution.
- FOF 136. In response to Mr. Genovese’s report, Hudson retained Capital Forensics on behalf of UASNM, who in turn retained Steve McGinnis.
- FOF 137. McGinnis advised that UASNM had a best execution problem because there were excessive markups, and possibly an unregistered broker-dealer issue, and said that UASNM needed to self-report the issue, quickly.
- FOF 138. Hudson and Keller each signed affidavits after Malouf’s termination saying that if Malouf were to come back and control the company they would quit.
- FOF 139. ACA is a regulatory compliance consulting firm that provides advice and guidance to registered investment advisors.
- FOF 140. ACA assists and provides recommendations regarding client reporting requirements, it did not assume ultimate responsibility for the accuracy of the form ADVs that UASNM prepared.
- FOF 141. ACA does not assume any of the fiduciary duties its clients are subject to as supervised persons under the Investment Advisers Act.
- FOF 142. Ciambor received on the job training from former regulators.
- FOF 143. Ciambor did not undergo the formal training program established by ACA in 2007.
- FOF 144. Ciambor started at ACA in the spring of 2003 and took a lead role with regard to the annual examinations of UASNM in 2006.

- FOF 145. Ciambor learned through discussions with Hudson, that UASNMM met its best execution obligations by seeking clarification on pricing in accordance with industry best practice of requesting multiple bids from multiple broker dealers or other counter parties.
- FOF 146. Ciambor understood that Malouf and Hudson were generally responsible for bond trading on behalf of UASNMM.
- FOF 147. Ciambor relied in part upon UASNMM's representations that it made price inquiries for fixed income trades in its best execution evaluation.
- FOF 148. Prior to 2008, Mr. Malouf's dual registration as a broker-dealer and also an investment adviser created a conflict of interest that required adequate disclosure and was in fact disclosed.
- FOF 149. Malouf told Ciambor during the June 2008 on site review that he had sold his RJ branch to Maurice Lamonde.
- FOF 150. Ciambor discovered that Malouf had been receiving payments from Lamonde for the sale of his RJ branch no later than the June 2010 on site review.
- FOF 151. When Ciambor learned in June of 2010 that Malouf was receiving payments from Lamonde as a result of UASNMM bond trades through the RJ branch he believed that was a clear conflict of interest.
- FOF 152. ACA recommended that UASNMM add language to its Form ADV Part II disclosing the potential conflict of interest.
- FOF 153. The payments from Lamonde and incentive to execute bond trades through RJ created a best execution issue in Ciambor's mind.
- FOF 154. Ciambor believes that disclosure of the financial incentive for UAS to route trades through RJ, that was ultimately made in March 2011, should have been disclosed in all Form ADVs ever since Malouf's arrangement with Lamonde in 2008.
- FOF 155. ACA does not undertake a duty to root out fraud on behalf of its clients.
- FOF 156. When asked if Malouf told him when he interviewed Malouf in June of 2009, that he had received in the last year and a half over forty payments from Lamonde totaling over half a million dollars based upon trades that

had been run through Malouf's former Raymond James branch, Ciambor testified "absolutely not," but if that were the case he should have.

- FOF 157. Investment Advisers have a fiduciary duty.
- FOF 158. Fiduciary duty as a financial advisor "means that you need to have [client] interests first."
- FOF 159. Income from RJ Branch prior to 2008 was commission based. RJ took a 15% cut.
- FOF 160. Prior to 2008, if another broker made a trade the commission would flow to Malouf from RJ and he'd pay the broker a percentage; Lamonde got 60%.
- FOF 161. Malouf issued the brokers 1099s on commissions they earned.
- FOF 162. Malouf's UASNMM salary for 2008 and 2009 was \$86,000.
- FOF 163. Prior to RJ coming to him, Malouf had not contemplated selling his profitable RJ branch.
- FOF 164. Malouf contends that he and Lamonde signed a written Purchase of Practice Agreement (Ex. 57) in the two weeks prior to January 2, 2008.
- FOF 165. Malouf contends that there was an Exhibit A to that agreement that listed the client accounts Malouf was transferring to Lamonde.
- FOF 166. Malouf testified that payment for the branch was to be 40% of branch revenue over a four year production period.
- FOF 167. The PPA stated that the production period was to be five years, from January 2, 2008 to December 31, 2012.
- FOF 168. Malouf is not sure why if everything is based on four years, the contract contemplates five.
- FOF 169. Following the sale of the RJ branch to Lamonde, Malouf's payments from Lamonde were his primary source of income.
- FOF 170. Malouf is familiar with Exhibit 29, which is a RJ compilation of all bond trades done through RJ by UAS from 2008 to 2011.

- FOF 171. Malouf testified that 60 to 70% of UASNM's bond trades made through RJ were made by him.
- FOF 172. At times Hudson would approach Malouf and tell him the block of bonds that were necessary and Malouf would do the transaction.
- FOF 173. From 2008-2011, Malouf did the majority of his bond trades on behalf of UASNM clients through RJ.
- FOF 174. Malouf acknowledged that "it's possible" that had he shopped around, he could probably get a lower bid for his clients. He was also shown a video clip of previous testimony (Ex. 195, video of St. Tr. at 291:6-18) (Ex. 194 is written transcript) where he testified as follows:
- "Q: For best execution, couldn't you shop around and get a lower level commission for your client?"
- A: I think – I think that's possible, yeah. I guess you probably could. But the fact is this whole thing was to give me money to put into the California office that has not been talked about today.
- And the—it's been—the truth of the matter is that this has always been acceptable since 99. And now the divorce is going on, it's not. And that's just the way it is.
- I mean, it's been – it's just the way it is. And I could be painted any other way, but that's just the way it is."
- FOF 175. Malouf further testified that when he used Raymond James' bond desk to purchase bonds Lamonde was paid a commission and then had money to pay Malouf under their agreement.
- FOF 176. One of the reasons Malouf chose to trade through Raymond James was because then he got paid.
- FOF 177. Between 2008 and May of 2011, Malouf received approximately \$1.1 million from Lamonde.
- FOF 178. Malouf agrees that the ongoing payment arrangement with Lamonde created a clear conflict of interest ever since he entered into the arrangement with Lamonde in early 2008.

- FOF 179. Everyone at UASNM, including Malouf, was required to be familiar with UASNM's compliance manual.
- FOF 180. Malouf testified that "spot-checking" is going out to Schwab or Fidelity or another broker and getting a bid.
- FOF 181. Malouf has not filed his 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013 tax return.
- FOF 182. On or about June 23, 2011, Malouf received from his accountant, Don Miller of Peltier, Gustafson, & Miller, P.A., draft Schedule Cs for years 2005 through 2009, which included Schedule Cs for each of those years that reflected a Principal business or profession of "INVESTMENT BROKER" at the Business name "RAYMOND JAMES." (Ex. 238).
- FOF 183. Those draft Schedule Cs reflected expenses on the Raymond James Investment Broker Schedule Cs in each of the years 2005-2009.
- FOF 184. In the 2008-2011 time period, Malouf understood that Lamonde would pay at most one percent commission on a bond trade, or less if Raymond James' institutional grid suggested it.
- FOF 185. When using BondDesk, Malouf would not know the precise commission that Lamonde was going to charge for the trade.
- FOF 186. Malouf did not dispute his prior testimony that for a \$1 million treasury bond an appropriate commission would be one percent, would drop to 0.5 percent above that then goes down from there.
- FOF 187. Malouf contends that his arrangement with Lamonde was in compliance with NASD/FINRA guidance about receipt of continuing commissions.
- FOF 188. Malouf reviewed at least some of UASNM's marketing materials from 2005 to 2010.
- FOF 189. While Malouf testified that he may not have read every work of UASNM's website, he was familiar with its contents in the 2008, 2009, and 2010 time frame.
- FOF 190. Malouf's understanding was that what's on the UASNM website for the public to consume is what's important.

- FOF 191. Mr. Malouf previously testified that he “probably read” statements on UASNМ’s website in 2008 about UASNМ being independent and not charging commissions.
- FOF 192. Malouf was at least partially responsible for the accuracy of UASNМ’s ADV disclosures.
- FOF 193. “Without a doubt,” disclosure regarding the ongoing payments Malouf was receiving from Lamonde should have been in all the relevant ADV disclosures.
- FOF 194. Malouf is currently the owner of New Mexico Wealth Advisors, a fee only investment advisor with a little over \$25 million in assets under management.
- FOF 195. Paula Calhoun handled personal bookkeeping for Malouf.
- FOF 196. On at least one occasion, Malouf requested that Lamonde get an advance from Raymond James.
- FOF 197. When Malouf was CEO of UASNМ he was “top dog” and Mr. Kopczyński and Mr. Hudson worked for him.
- FOF 198. Malouf and Hudson would cooperate on larger bond trades, for sure.
- FOF 199. Malouf assisted Keller with the bond purchase reflected in Exhibit 540.
- FOF 200. Malouf understands that there is a different best execution duty for a broker-dealer than there is for an investment adviser.
- FOF 201. Thousands of other brokers utilize BondDesk.
- FOF 202. Keller had less bond trading experience than Malouf, mostly involving two clients, a New Mexico hospital association and a large individual client with a large fixed income portfolio.
- FOF 203. In 2008, Keller generally would take a bond to different brokers, get bids, and choose the broker with the lowest price.
- FOF 204. Exhibit 218 reflects Keller’s seeking bids for a bond purchase, RJ offering a best price of 106.854 and Schwab offering a best price of 105.753.

- FOF 205. In 2010, when Malouf's payments from Lamonde were known Keller expressed concern about changing the ADV to have less disclosure about RJ to clients.
- FOF 206. Keller heard Malouf say that he was a skilled negotiator and would grind down on bond desks to get a good price.
- FOF 207. Keller estimated that Malouf executed 80 to 90 percent of UASNM bond trades on a long-term basis, Keller estimated that he executed maybe \$5 million in a given year, and estimated that Hudson did a lot less than that because he did not have the same sort of institutional client that required that type of bond trading.
- FOF 208. At times, Keller would go to RJ with a different broker's bond price and give RJ the chance to meet or beat that price.
- FOF 209. Steven McGinnis was retained as an expert witness by UASNM in 2011.
- FOF 210. McGinnis was hired to look at transactions involving trades directed from UASNM clients to outside brokerage firms from a compliance and supervisory perspective.
- FOF 211. McGinnis recommended to UASNM that it: (1) terminate its relationship with Malouf immediately; (2) remove Malouf's position of ownership and as a director; and (3) take the evidence that it had acquired in its lawsuit against Malouf and self-report to the Securities and Exchange Commission.
- FOF 212. McGinnis's recommendations were also based on problems with the purported PPA, including missing or inconsistent dates, signatures, and terms.
- FOF 213. Malouf's conflict of interest was the largest McGinnis has seen in his career.
- FOF 214. Lamonde paid Malouf using payroll advances at times.
- FOF 215. Daniel Moriarty invested money through UASNM beginning in 1998 and began dealing with Malouf in 2008 or 2009.
- FOF 216. One of the reasons Moriarty invested money through UASNM was that it does not charge commissions.

- FOF 217. Judith Owens invested money through UASNM beginning in about September 2008 after Malouf was recommended to her.
- FOF 218. After Malouf explained UASNM to Owens, Owens understood that she would pay UASNM based on a percentage of total funds invested.
- FOF 219. From 2007-2011, Kirk Bell was Assistant Regional Director at Raymond James Financial Services.
- FOF 220. Bell supervised the 4GE branch owned by Lamonde from 2008-2011, with which Malouf was previously affiliated.
- FOF 221. Malouf's Raymond James client accounts were transitioned to Lamonde at the end of 2007 or beginning of 2008, and assigned the representative number 44Y5.
- FOF 222. Raymond James policy required written approval for a Raymond James representative to share commissions or revenues with a non-Raymond James representative.
- FOF 223. Raymond James intercepted an e-mail between Lamonde as his wife, referencing financial problems and the lack of a written agreement with Malouf. As a result, Bell requested a copy of the written buy/sell agreement between Malouf and Lamonde.
- FOF 224. Lamonde told Bell that Lamonde and Malouf were working on a buy/sell agreement, but that no sale had yet taken place; Lamonde did not tell Bell that Lamonde was already making payments to Malouf.
- FOF 225. During 2009, Bell requested a copy of the buy/sell agreement on multiple occasions; the agreement was not provided, Lamonde told Bell that Lamonde was still working on the agreement, and Lamonde responded to e-mail requests for the agreement as follows: "I'M WORKING ON THE PURCHASE AGREEMENT" (on May 15, 2009) and "I AM STILL WORKING ON THE AGREEMENT AND WILL SEND IT AS SOON AS WE FINISH IT" (on June 4, 2009). Bell understood there was no sale or agreement at that time.
- FOF 226. No later than June, 2010, Raymond James learned during a branch examination of 4GE that Lamonde was paying Malouf by writing him checks. Bell again requested a copy of the buy/sell agreement, and instructed Lamonde to stop making the payments.

- FOF 227. Bell received a copy of the purported written buy/sell agreement no later than June 10, 2010. The front page was dated January 2, 2008, but the signature page and notary were dated June 11, 2010. Bell was concerned about the date discrepancy and thought it did not make sense and was inappropriate.
- FOF 228. Bell's understanding of the 40% payment term in the purported buy/sell agreement is that it would apply only to the purchased accounts.
- FOF 229. Bell was concerned about Lamonde in 2010, due to issues including the purported buy/sell agreement and numerous payroll advances to Lamonde, but Raymond James did not terminate its affiliation with Lamonde.
- FOF 230. In September, 2010, Bell e-mailed Lamonde, indicating Bell's understanding that Lamonde had stopped paying Malouf.
- FOF 231. In the summer of 2011, Lamonde informed Bell that Lamonde was leaving Raymond James to take a position at a bank. At that time Bell's understanding was that Lamonde was not making payments to Malouf.
- FOF 232. The Raymond James policy on markups and markdowns sets maximums for markups and markdowns.
- FOF 233. Wolper never provided legal advice to investment adviser on best execution issue.
- FOF 234. Wolper never provided expert opinions regarding best execution for investment advisers.
- FOF 235. Wolper does not hold any securities license.
- FOF 236. Wolper never worked as a regulator of an investment adviser.
- FOF 237. Wolper never worked as an investment advisor.
- FOF 238. Wolper never traded bonds for a client.
- FOF 239. Wolper never managed a bond fund.
- FOF 240. As to the qualitative factors relevant to best execution, a number of brokers can satisfy them.

- FOF 241. Wolper does not offer opinion on appropriate commission range or whether particular commissions are reasonable.
- FOF 242. Wolper does not believe there is a difference between the fiduciary duty applied to broker dealers versus investment advisors as to best execution.
- FOF 243. Wolper admits that Raymond James satisfying its duty of best execution does not mean that Malouf satisfied his.
- FOF 244. Wolper does not have opinion on whether the PPA is a valid contract.
- FOF 245. Wolper thinks that retiring from the securities industry does not mean one has to stop selling securities, but rather just leave the broker-dealer industry; one may still be an investment advisor.
- FOF 246. Wolper is unaware of anything Malouf did to follow up on his purportedly delegated duties.
- FOF 247. DeNigris is not an expert on investment advisor regulations.
- FOF 248. DeNigris does not offer an opinion as to whether the commissions charged on the bond trades at issue are reasonable.
- FOF 249. Tab 2 of DeNigris' report reflects trade allocations, not the actual bond trades placed by UASNM through Raymond James.
- FOF 250. DeNigris does not offer an opinion on whether his commission yield effect is material.
- FOF 251. Tab 4 includes commissions for brokers other than Lamonde.
- FOF 252. Malouf is not governed by Raymond James's markup/markdown policy.
- FOF 253. Mr. DeNigris' Table 4 reflects gross and net commissions earned on all accounts under the 4GE designation.
- FOF 254. Beginning in late 2007 or early 2008, through 2011, UASNM's bookkeeper, Ms. Calhoun, performed bookkeeping services for Malouf personally.
- FOF 255. Other than nominal cash bonuses such as \$50 paid once a year, Ms. Calhoun was not paid separately for the personal bookkeeping she performed for Malouf.

- FOF 256. Ms. Calhoun performed personal bookkeeping services for Malouf because those were his instructions in his capacity as UASNM's President.
- FOF 257. Ms. Calhoun testified that others at UASNM did not have knowledge of the particulars of Ms. Calhoun's personal bookkeeping for Malouf.
- FOF 258. In performing Malouf's personal bookkeeping, Ms. Calhoun received checks for deposit approximately twice a month from Maurice Lamonde.
- FOF 259. At Malouf's instruction, from 2008 through the first quarter of 2011, Ms. Calhoun also performed bookkeeping services for Lamonde's Ltd.
- FOF 260. Ms. Calhoun prepared Form 1099s for Lamonde's Ltd., including a 1099 to Malouf for 2010 that listed amounts he was paid as non-employee compensation, but not as proceeds from the sale of a business.
- FOF 261. From 2008 through 2011, Ms. Calhoun spent approximately 30-40% of her time working on Malouf's personal bookkeeping.
- FOF 262. Ms. Calhoun testified that to her knowledge, nobody other than her witnessed the conversations between Malouf and Lamonde as to the amount of the checks.
- FOF 263. Gibbons said that BondDesk was one appropriate place to go and find best bid/ask.
- FOF 264. Prior to June 2010, Ciambor said it appeared UASNM was following best practices for best execution.
- FOF 265. RJFS had a maximum retail commission grid.
- FOF 266. RJFS reduced a commission on at least one trade.
- FOF 267. RJFS had written policies and procedures regarding best execution for Broker-Dealers.
- FOF 268. RJFS's policies and procedures required it to obtain best execution from a broker dealer perspective for its customers.
- FOF 269. UASNM was a customer of RJFS when it bought or sold fixed income securities through RJFS.

- FOF 270. Bell never asked Malouf for copy of the PPA.
- FOF 271. Malouf or LaMonde obtained the PPA template from the RJFS website.
- FOF 272. UASNM relied upon the ACA contract for expectations of services to be provided.
- FOF 273. Ciambor knew that through the end of 2007 Malouf received compensation from RJFS and it was disclosed in ADV.
- FOF 274. Ciambor worked primarily with Hudson and Kopczynski on matters relating to UASNM's engagement of ACA.
- FOF 275. Ciambor knew that a significant number of bond trades were being sent to RJFS during 2007 to 2011.
- FOF 276. Exhibit 386 - ACA notes reflect that if the SEC case just names Malouf and not firm, ACA believes the firm will not need to mention the investigation in its Form ADV.
- FOF 277. Hudson created the UASNM trade blotter (Exhibit 30) in the state court litigation between UASNM and Malouf.
- FOF 278. Hudson testified that from the client's perspective, when a large purchase is made and allocated, the portion allocated to their account appears to the client as if a trade was made in their account.
- FOF 279. Hudson knew there was a substantial amount of bond trading being done on behalf of UASNM customers.
- FOF 280. Malouf authorized the specific disclosure regarding Malouf's sale of 4GE to LaMonde and his receipt of payments, which was made on Part II of UASNM's Form ADV in March 2011, when Malouf was acting as CCO.
- FOF 281. United States Treasury, agency and municipal bonds traded on behalf of UASNM clients from 2008 through 2011 were "securities" as defined by Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934 (Exchange Act).
- FOF 282. United States Treasury and municipal bonds are "exempted securities" as defined by Section 3(a)(12)(A)(i) and (A)(ii) of the Exchange Act, but municipal bonds are not deemed to be "exempted securities" for the purposes of Section 15 of the Exchange Act (*see* Section 3(a)(12)(B)(ii)).

- FOF 283. United States Treasury bonds are “government securities” as defined by Section 3(a)(42) of the Securities Act.
- FOF 284. From 2008 to May 2011, Malouf was one of several investment advisers at UASNM who provided advice regarding investments on behalf of UASNM customers and transactions were carried out on behalf of UASNM customers pursuant to the advice of Malouf and other UASNM advisers.
- FOF 285. In providing investment advice to UASNM customers, Malouf and other UASNM advisers utilized instruments of interstate commerce, such as telephones, electronic mail, and regular mail.
- FOF 286. During 2008 to May 2011, Malouf was CEO and President of UASNM, a registered investment adviser, and he was an advisory representative for UASNM.
- FOF 287. During 2008 to May 2011, Malouf solicited clients on behalf of UASNM.
- FOF 288. Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers.
- FOF 289. At times, other UASNM advisers also identified bonds to be purchased for UASNM customers.
- FOF 290. Malouf also relied upon the broker-dealers that executed bond transactions to achieve best execution.
- FOF 291. During 2008 until his termination on May 13, 2011, Malouf served on UASNM’s Investment Committee along with others including Kirk Hudson, Joseph Kopczynski, and Peter Lehrman.
- FOF 292. From 2008 to May 2011, Malouf was not registered with the Commission as a broker or dealer and he was not associated with a broker or dealer.
- FOF 293. On approximately January 1, 2008, Malouf sold a Raymond James Financial Services (RJFS) broker-dealer branch that he founded in 1999 to his then branch manager Maurice Lamonde.
- FOF 294. From 2008 into 2011, Lamonde made a series of ongoing payments to Malouf for the RJFS branch.

- FOF 295. Kirk Hudson was an owner of approximately 36% of the shares of UASNM and was the chief operating officer of UASNM during 2008 through 2011.
- FOF 296. Matt Keller was an investment adviser with UASNM during 2008 through 2011.
- FOF 297. Hudson, Keller, and Malouf all placed bond trades with Lamonde and the RJFS branch office during 2008 through 2011.
- FOF 298. Hudson was aware that Malouf sold the RJFS branch.
- FOF 299. Paula Calhoun was the bookkeeper for UASNM, and also kept Malouf's personal books.
- FOF 300. Calhoun received certain payments from Lamonde on behalf of Malouf.
- FOF 301. Calhoun provided bookkeeping services for Maurice L. Lamonde Ltd.
- FOF 302. Joseph Kopczynski was the chief compliance officer of UASNM during 2008 until January 2011.
- FOF 303. UASNM engaged ACA, a compliance consulting firm, at various times beginning in 2002 through 2011.
- FOF 304. ACA contracted with UASNM to provide mock SEC compliance audits annually.
- FOF 305. Kopczynski, Hudson, and ACA all knew by May 2008 that Malouf sold the RJFS branch to Lamonde.
- FOF 306. Kopczynski, Hudson, and ACA all knew no later than June 2010 that Malouf was receiving periodic payments from Lamonde.
- FOF 307. UASNM did not update its Form ADV to specifically reflect the payments by Lamonde to Malouf for the sale of the RJFS branch until March 2011.
- FOF 308. Lamonde died unexpectedly in April 2014.
- FOF 309. On May 13, 2011, Kopczynski and Hudson voted to terminate Malouf as CEO of UASNM, and locked him out of the office.

- FOF 310. On May 27, 2011, Kopczynski, Hudson, and UASNM filed a lawsuit against Malouf in the Second Judicial District Court, Bernalillo County, New Mexico seeking injunctive relief and declaratory judgment.
- FOF 311. On May 14, 2014, Hudson executed an Offer of Settlement of UASNM, Inc., in anticipation of public administrative and cease-and-desist proceedings to be instituted against UASNM by the Commission and submitted it for the purpose of settling those proceedings. The Offer of Settlement stated that “UASNM has undertaken to pay \$506,083.74 from the Escrow Account to compensate affected clients for the additional markups and markdowns paid by those clients as described in Paragraph 18 of the Order (the “Compensatory Payment”).” The Commission accepted the Offer of Settlement.
- FOF 312. The Commission instituted proceedings against UASNM and Malouf on June 9, 2014, in which it alleged that UASNM and Malouf violated the Investment Advisers Act of 1940 by breaching their fiduciary duty to UASNM customers by, among other things, failing to seek best execution on certain bond transactions.
- FOF 313. Both before and after the sale of the RJFS branch to Lamonde, UASNM advisers placed bond trades through the RJFS branch.
- FOF 314. Both before and after the sale of the RJFS branch to Lamonde, UASNM advisers placed bond trades through other broker/dealers.
- FOF 315. Both before and after the sale of the RJFS branch to Lamonde, the branch subleased office space from UASNM and was physically located within the same offices as UASNM. The employees of UASNM and the RJFS branch worked in close proximity until June 2011, at which time UASNM terminated the RJFS branch sublease.
- FOF 316. Malouf would at times assist Hudson and Keller with bond trades they made on behalf of their clients.
- FOF 317. Hudson studied the bond trades done through brokers other than Raymond James and believed that those were primarily done by Matt Keller and Austin McDaniel, and that Malouf might have been involved with only one of those non-Raymond James trade.
- FOF 318. Kirk Hudson compiled the trades reflected in Exhibit 30 from UASNM’s account system, Portfolio Technologies.

- FOF 319. Exhibit 339 is an April 7, 2008 e-mail from Monica Pineda to Kirk Hudson, copying Dennis Malouf, Moe Lamonde, and Austin McDaniel that reflects a \$3 million bond purchase that was allocated to sixty different individual accounts.
- FOF 320. The loan reflected in Exhibit 339 was a federal agency loan with about a four-year maturity.
- FOF 321. A commission of approximately 1% was paid to the Raymond James branch on the \$3 million federal agency loan reflected in Exhibit 339.
- FOF 322. A \$5,500 commission was paid on the \$522,825 bond trade (1.052%) reflected in Exhibit 553 and the other trade was for \$1,537,829 and involved a \$15,212.90 commission (0.99%).
- FOF 323. The number of checks Malouf received from Lamonde between January 2008 and May 11, 2011 varied from between zero to four a month.
- FOF 324. Don Miller was Mr. Malouf's accountant and prepared draft tax returns for Mr. Malouf for the years 2005, 2006, 2007, 2008, and 2009.
- FOF 325. Mr. Miller first saw a copy of the written Purchase of Practice Agreement in May of 2011.
- FOF 326. Mr. Miller never had an understanding that \$1.1 million was an agreed upon value for the Raymond James branch that Mr. Malouf sold to Mr. Lamonde.
- FOF 327. Mr. Miller estimated that Mr. Malouf owes the IRS between \$300,000 and \$500,000 in back taxes.
- FOF 328. Mr. Malouf did not tell Ms. Owens that he would receive payments related to bond trades placed through Raymond James.
- FOF 329. Ms. Owens would have wanted to know that Mr. Malouf would receive payments related to bond trades placed through Raymond James.
- FOF 330. Mr. Malouf did not tell Mr. Moriarty that he would receive payments related to bond trades placed through Raymond James.
- FOF 331. Mr. Moriarty would have wanted to know that Mr. Malouf would receive payments related to bond trades placed through Raymond James.

- FOF 332. Mr. Moriarty was disappointed when he learned that Dennis Malouf was receiving payments from Raymond James for the commission on the bond investments.
- FOF 333. Broker dealers do not have to charge a commission that is consistent with the general market.
- FOF 334. Malouf acknowledged that during the 2008-2011 time period he should have gotten multiple bids from different brokers to seek best execution on bond trades.
- FOF 335. At times between 2008 and May 2011, UASNM's Forms ADV and website stated that Mr. Malouf had a Bachelor of Science in Finance degree from the University of Northern Colorado at Greeley.
- FOF 336. Mr. Malouf did not receive a Bachelor of Science in Finance degree from the University of Northern Colorado.
- FOF 337. UASNM clients were purchasers of securities.
- FOF 338. UASNM clients were people, clients, and/or prospective clients.
- FOF 339. Joseph Kopczynski was paid \$2,139,000 by Dennis Malouf and Kirk Hudson for UAS.
- FOF 340. The UASNM investment committee was comprised of Dennis Malouf, Peter Lehrman, Kirk Hudson, and Matt Keller from 2008 to 2011.
- FOF 341. Most of the bond trades done from 2008 to 2011 were aggregated/allocated trades. Kirk Hudson handled more allocation work than anyone else at UASNM.
- FOF 342. Supervision of Malouf's bond trading was limited to analysis and/or review performed by ACA.
- FOF 343. There have been no complaints, internal or external, regarding the quality or suitability of any particular bonds purchased by UASNM for customers.
- FOF 344. Commissions were not separately set forth on the confirmations for bond trades placed by UASNM for its customers.
- FOF 345. Kirk Hudson knew UASNM placed trades for customers through Raymond James Financial Services (RJFS) from 2004 through 2007, and that, as a

registered representative of RJFS, Dennis Malouf received commissions for those trades.

- FOF 346. ACA Compliance Group would conduct mock audits of UASNM and then use the results of mock audits to suggest and/or prepare updates to UASNM's Forms ADV.
- FOF 347. Kirk Hudson knew Dennis Malouf was receiving ongoing payments from Maurice LaMonde in early 2008, and assumed those payments were for the sale of the branch. Payments from Maurice LaMonde to Dennis Malouf were not a secret.
- FOF 348. Kirk Hudson knew that commissions on transactions were a source of revenue for Branch 4GE.
- FOF 349. Kirk Hudson knew that if Dennis Malouf was receiving payments from RJFS at the same time he was referring business to RJFS it was a potential conflict of interest which would need to be disclosed.
- FOF 350. ACA prepared UASNM's compliance manual which was intended to keep UASNM in compliance with SEC regulations.
- FOF 351. In 2010, UASNM was not following UASNM's written procedures regarding summarizing reviews related to best execution in written format.
- FOF 352. Kirk Hudson believed people at UASNM were making inquiries as to price in connection with best execution, regardless of whether that was documented or not.
- FOF 353. Dennis Malouf opened accounts at UBS, Smith Barney, and Morgan Stanley, and there were existing accounts at Griffin Kubiak, Stevens and Thompson, and Crews & Associates for the purpose of being able to buy bonds at those brokers or to check with them regarding prices.
- FOF 354. Kirk Hudson does not know whether or not Dennis Malouf sought multiple bids on bond purchases, only that he has not seen documentation of such bids. Kirk Hudson admits that Dennis Malouf might have sought multiple bids but not documented it.
- FOF 355. UASNM retained Capital Forensics and Steve McGinnis to analyze bond markups and review for best execution.

- FOF 356. Kirk Hudson has an MBA from the University of Chicago and holds a Certified Financial Analyst designation and a Series 65 license.
- FOF 357. Kirk Hudson understood his fiduciary duties to his customers, what was required for best execution, and the disclosure required for conflicts of interest. Kirk Hudson also understood that UASNM had an obligation to conduct periodic and systematic evaluation to ensure best execution.
- FOF 358. Kirk Hudson understood that Joseph Kopczynski could foreclose on the note if Kirk Hudson did not cooperate.
- FOF 359. Kirk Hudson believed ACA was conducting a periodic and systematic review of UASNM's best execution, that ACA had the resources available to conduct a proper best execution review, and that they were looking at commission levels in connection with their best execution review. When ACA did not advise UASNM of any issues with respect to its best execution, Kirk Hudson believed that the firm, in fact, did not have any issues.
- FOF 360. Kirk Hudson relied upon ACA to conduct UASNM's periodic and systematic review of best execution.
- FOF 361. Kirk Hudson understood that the compliance responsibilities of UASNM had been delegated to Joseph Kopczynski from January 2008 to December 2010.
- FOF 362. Kirk Hudson read and checked Part I of ADVs for accuracy and truthfulness before submitting them.
- FOF 363. UASNM did not have a written multi-bid process for executing bond trades in its compliance manual.
- FOF 364. Kirk Hudson believed that payments from Maurice LaMonde to Dennis Malouf were based upon the level of business done by Maurice LaMonde.
- FOF 365. Kirk Hudson has a \$20,000 financial interest in National Advisors Trust Company. He received compensation from NATC during his time serving on the board.
- FOF 366. Kirk Hudson does not perceive ownership of NATC shares as potential conflict of interest.

- FOF 367. Kirk Hudson attested to the truth and accuracy of Forms ADV for UASNM that omitted required disclosures regarding a member of the UASNM investment committee.
- FOF 368. UASNM Forms ADV contained no disclosure regarding potential conflicts of interest arising from a financial arrangement with respect to leasing office space to Branch 4GE.
- FOF 369. Kirk Hudson attested that the information and statements made in UASNM Forms ADV, including exhibits and any other information submitted, was true and correct, under penalty of perjury, by submitting them with his name or digital signature on them.
- FOF 370. As CCO, Joseph Kopczynski was supposed to be monitoring for short term trading in client's accounts.
- FOF 371. Dennis Malouf was paid \$1.1 million for interest in UASNM as part of the settlement between them, \$350,000 was paid directly to Dennis Malouf, and \$850,000 was held back in an account. \$506,000 of the \$850,000 that was held back in account was paid to UASNM customers, and another \$100,000 from that account was used to pay UASNM's civil penalty.
- FOF 372. Dr. Gary Gibbons did not know, confirm, or determine whether Dennis Malouf placed any specific trade that was part of his expert analysis.
- FOF 373. Mr. McGinnis has no prior experience trading bonds for customers as an investment adviser.
- FOF 374. Mr. McGinnis' understanding is that when searching for bonds using BondDesk, a user is able to input various bond parameters to identify a bond to purchase, and then obtain the five best prices for those bonds from approximately 160 broker-dealers.
- FOF 375. Mr. McGinnis has not provided any evidence of comparisons between the bond trades at issue and other trades in the same bonds that were done at the same time, and has also not provided any analysis of any such comparable trades.
- FOF 376. Dr. Gibbons' expert opinion does not consider or account for the conduct of ACA Compliance Group or Joseph Kopczynski.

- FOF 377. Dr. Gibbons' expert opinion does not consider or account for the fact that Kirk Hudson knew that Dennis Malouf was receiving ongoing payments from Maurice LaMonde.
- FOF 378. Neither the Securities and Exchange Commission, North American Securities Administrators Association, the Financial Industry Regulatory Authority, nor the Securities Industry and Financial Markets Association have published a range of acceptable markups or commissions on bond trades.
- FOF 379. UASNМ's bond trades were not placed in the interdealer market.
- FOF 380. Dr. Gibbons, in analyzing the trades at issue, did not know whether they were principal or agency transactions.
- FOF 381. It is Dr. Gibbons' opinion that the number of bids that an investment adviser should get for any given bond trade varies based upon the circumstances, the type of bond, and the broker-dealers that are trading it.
- FOF 382. ACA conducted mock SEC inspections of UASNМ by using the current document request list utilized in inspections by the SEC at that time as a baseline, and then submitting supplemental document requests as warranted.
- FOF 383. ACA never advised UASNМ or Malouf that it was not examining UASNМ's fixed income trades for excessive markups or commissions.
- FOF 384. ACA reviewed Part I and II of UASNМ's Forms ADV annually and made recommendations to UASNМ regarding updates it thought were necessary.
- FOF 385. Neither Hudson nor Kopczynski ever disclosed to Ciambor that they knew Malouf was receiving payments from LaMonde.
- FOF 386. Kopczynski convinced Ciambor to remove the "high" risk level rating that ACA assigned to UASNМ's best execution practices in its 2011 annual review a week before the SEC conducted its examination of UASNМ.
- FOF 387. Malouf considered Branch 4GE to be a substantial asset that he wanted to protect.
- FOF 388. The advisers primarily responsible for Dan Moriarty's accounts were Kopczynski and Hudson.

- FOF 389. The purchase of practice agreement between Malouf and LaMonde came from a template provided by RJFS.
- FOF 390. In Kirk Bell's experience, it was typical for accounts to be transferred from one registered representative to another in connection with the sale of a branch.
- FOF 391. As of April 21, 2008, Kirk Bell was aware that LaMonde was the owner of Branch 4GE and that Malouf no longer owned it.
- FOF 392. Ciambor was a consultant at ACA from 2006 to 2009 and a principal consultant from 2009 to 2012.
- FOF 393. Ciambor took over the lead role with respect to ACA's annual examinations of UASNM in or around 2006.
- COL 1. Section 15(a)(1) of the Exchange Act makes it "unlawful for any [unregistered or unaffiliated] broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security . . . ) unless such broker or dealer is registered" with the Commission in accordance with Section 15(b) of the Exchange Act. 15 U.S.C. § 78o(a)(1). Scierter is not required for a violation of this provision. *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003). Similarly, Section 15C(a)(1)(A) of the Exchange Act makes it unlawful for any unregistered broker to effect any transaction in any government security and does not require scierter. 15 U.S.C. § 78o-5(a)(1)(A).
- COL 2. Section 3(a)(4) of the Exchange Act defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others."<sup>10</sup> 15 U.S.C. §78c(a)(4). The phrase "engaged in the business" connotes "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Massachusetts Fin. Serv., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976); *see also SEC v. Kramer*, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011). Broker activity can be evidenced by among such things as regular participation in securities transactions, receiving transaction-based compensation or commissions (as opposed to salary), a history of selling the securities of other issuers, involvement in advice to investors and active recruitment of investors. *See, e.g., SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005); *SEC v. Kenton Capital, Ltd*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998).

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<sup>10</sup> It is not disputed that the bond trades at issue were securities and that Treasury bonds are government securities. The use of interstate commerce is also not disputed.

- COL 3. Section 15(a)(1) of the Exchange Act makes it “unlawful for any [unregistered or unaffiliated] broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security . . . ) unless such broker or dealer is registered with the Commission in accordance with Section 15(b) of the Exchange Act.
- COL 4. Scienter is not required for a violation of Section 15 of the Exchange Act.
- COL 5. Section 15C(a)(1)(A) of the Exchange Act makes it unlawful for any unregistered broker to effect any transaction in any government security and does not require scienter.
- COL 6. Section 3(a)(4) of the Exchange Act defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others.”
- COL 7. The phrase “engaged in the business” connotes “a certain regularity of participation in securities transactions at key points in the chain of distribution.”
- COL 8. Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from using instruments of interstate commerce to employ any device, scheme, or artifice to defraud, or to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Section 206(1) requires scienter; Section 206(2) does not.
- COL 9. Section 206 establishes a federal fiduciary standard for investment advisers, including the obligations to exercise the utmost good faith in dealing with their clients, to disclose to their clients all material facts, and to employ reasonable care to avoid misleading their clients.
- COL 10. Investment advisers have a duty “to eliminate, or at least to expose, all conflicts of interest which might incline [them] – consciously or unconsciously – to render advice which was not disinterested.”

- COL 11. Information is “material” if there is a substantial likelihood that a reasonable person would consider the information important.
- COL 12. The existence of a conflict of interest is a material fact which an investment adviser, as a fiduciary, must disclose to a client.
- COL 13. Section 17(a) of the Securities Act prohibits employing a fraudulent scheme, obtaining money or property through material misrepresentations or omissions, or engaging in a course of conduct that acts as a fraud or deceit in the offer or sale of a security.
- COL 14. Scierter need not be demonstrated to establish a violation of Section 17(a)(2) or Section 17(a)(3) of the Securities Act.
- COL 15. There are no SEC rules or regulations establishing a specific percentage or dollar value amount that would constitute an excessive markup or commission on bond trades.
- COL 16. Whether a markup or commission on a bond trade is reasonable is fact and situation specific on a case-by-case basis, and reasonable minds can differ as to what the range of reasonable markups or commissions might be for any given situation.
- COL 17. It was within the scope of Kopczynski’s chief compliance officer’s duties to review a firm’s trade tickets to ensure that commissions being charged are reasonable and that the firm’s best execution policy is being complied with by its investment advisers.
- COL 18. When a CCO reviews trades placed by a firm, it is expected that such review include monitoring for excessive charges on those trades and ensuring fair treatment of clients.
- COL 19. It was within the scope of Kopczynski’s chief compliance officer’s duties to review and approve the content posted on a firm’s website.
- COL 20. It was within the scope of Kopczynski’s chief compliance officer’s duties to review and assist in the drafting of a firm’s Forms ADV, and to ensure their accuracy.
- COL 21. It is within the scope of a chief compliance officer’s duties to ensure that the policies and procedures laid out in a firm’s compliance manual are

being implemented and followed, and that the policies and procedures reflect the activities of the firm.

- COL 22. It is a CCO's responsibility to take or oversee corrective action, or to advise the CEO of what action needs to be taken, if the conduct of a firm is not consistent with its written policies and procedures.
- COL 23. An investment adviser must consider a number of qualitative and quantitative factors when trying to achieve best execution, not just the amount of commission.
- COL 24. A registered representative or a broker-dealer generally determines how much markup or commission to charge on bond transactions it places.
- COL 25. Mr. Hudson, Mr. Kopczynski, and Mr. Malouf had an obligation to disclose conflicts of interest that existed at UASNM that they were aware of.
- COL 26. Markups and markdowns are charges levied on bond purchases or sales when a broker-dealer buys or sells bonds from its own or for its own account.
- COL 27. Commissions, with respect to bond transactions, are charges that are levied when a broker-dealer is acting as an agent for a client and buying or selling bonds at another broker-dealer.
- COL 28. The terms markups, markdowns, and commissions are sometimes used interchangeably.

On December 22, 2014, the Division filed a Stipulation to Correct Transcript on behalf of itself and Malouf (Transcript Stipulation). The Transcript Stipulation identifies agreed-upon corrections to the hearing transcript. The corrections listed in the Transcript Stipulation reflect clear typographic or scrivener's errors, and thus they will all be adopted. Accordingly, it is FURTHER ORDERED that the corrections described in the Transcript Stipulation be made to the transcript.

SO ORDERED.

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Jason S. Patil  
Administrative Law Judge