

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3846 / June 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15917

In the Matter of

UASNM, INC.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against UASNM, Inc. (“UASNM” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This proceeding arises from misconduct with respect to client bond trading by UASNM, Inc. ("UASNM"), a registered investment adviser, and its former chief executive officer and majority owner, Dennis Malouf ("Malouf"). Between 2008 and 2011, Malouf directed UASNM client bond trades to a branch office that he had formerly owned of another broker-dealer ("Broker-Dealer"). The new manager of that branch ("Branch Manager"), and Malouf had entered into a secret oral agreement that Branch Manager would forward to Malouf substantially all of the commissions from UASNM's bond trading, which amounted to approximately \$1.1 million in payments to Malouf between 2008 and 2011. This commission arrangement, and the resulting material conflict of interest, were not disclosed to UASNM's clients. In addition, UASNM's website made statements about impartial investment advice, best execution, and commissions which were false or misleading in light of this secret oral agreement.

2. UASNM, acting through Malouf, also failed to seek best execution by directing the vast majority of client bond trades to Broker-Dealer without obtaining competing bids from other broker-dealers. Finally, UASNM failed to adopt and implement reasonable policies relating to best execution, and failed reasonably to supervise Malouf with respect to his client bond trading.

Respondent

3. **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 \$279 million in assets under management.

Other Relevant Individual

4. **Dennis J. Malouf**, age 54, 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. Malouf is named as a respondent in a separate administrative proceeding relating to his misconduct described in this Order.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

Relationship between UASNM and a Branch Office of Broker-Dealer

5. In 2004, Malouf purchased a majority 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 office of Broker-Dealer. The Broker-Dealer branch owned by Malouf sub-leased and occupied a portion of UASNM's office space. In 2007, Broker-Dealer became concerned about potential conflicts and supervision risks 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. 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 of the Broker-Dealer. Branch Manager continued to operate the Broker-Dealer office within UASNM's office space until June 2011, when UASNM required Branch Manager to find a new office location as a result of his involvement in Malouf's misconduct described below.

UASNM Terminated Malouf and Reported Potential Violations to Commission Staff

6. In May 2011, the minority owners of UASNM, acting in their capacities as directors, voted to terminate Malouf as an officer, director and employee of UASNM based on various allegations of misconduct. Malouf challenged the validity of this termination, which led to a lawsuit filed by UASNM against Malouf to remove him from the company ("the Lawsuit"). During the Lawsuit, UASNM's attorneys subpoenaed transaction records from Broker-Dealer, as well as bank account statements for Malouf and Branch Manager. In reviewing those records, UASNM discovered that from January 2008 through April 2011, Branch Manager had secretly forwarded to Malouf approximately \$1.1 million in commissions earned from UASNM client bond trades that Malouf had executed through Broker-Dealer. In the Lawsuit, UASNM also learned that Malouf had placed all UASNM bond trades through Broker-Dealer without obtaining competing bids, and as a result, UASNM clients had paid unnecessarily high markups and markdowns on those trades.

7. In September 2011, UASNM and Malouf settled the Lawsuit. Among other things, they agreed that UASNM would place \$850,000 in escrow to cover potential liability resulting from UASNM's plan to report possible best execution failures to the Commission (the "Escrow Account"). A New Mexico state court (the "State Court") currently retains jurisdiction to interpret and enforce the settlement agreement under which the Escrow Account was established. See UASNM v. Malouf (Second Judicial District Court, Bernalillo County, New Mexico Cause No. CV-2011-05595). In October 2011, UASNM reported to Commission staff a potential breach of fiduciary duty by Malouf with regard to bond trading on behalf of UASNM clients and other potential violations.

Branch Manager Secretly Paid Malouf All of the Commissions Earned on UASNM Bond Trades

8. Malouf was considered the bond expert 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 all bond transactions that he directed on behalf of UASNM clients. Therefore, between January 2008 and May 2011, UASNM placed over 200 bond trades through Broker-Dealer, representing approximately 90% of its bond trading during the period. During this period, UASNM traded U.S. Treasuries, federal agency bonds, and municipal bonds, and averaged between \$30 million and \$40 million in total trades per year.

9. Between January 2008 and April 2011, Branch Manager earned approximately \$1.1 million in commissions from UASNM bond transactions. Then, pursuant to an oral agreement with Malouf that was not disclosed to others at UASNM or Broker-Dealer or to UASNM clients, Branch Manager paid approximately the same amount to Malouf.

UASNM Failed to Disclose Malouf's Receipt of Commissions from Branch Manager and the Resulting Potential Conflicts of Interest

10. UASNM's Forms ADV Part II dated February 4, 2008, August 20, 2008, December 1, 2008, October 1, 2009, January 1, 2010, March 18, 2010, April 12, 2010, and UASNM's Form ADV Part 2A dated March 2011 failed to disclose Malouf's arrangement with Branch Manager, or the resulting conflicts of interest. Specifically, UASNM made no disclosure that Malouf was receiving commissions or continuing payments of any kind from Branch Manager.

11. Item 12 of UASNM's Forms ADV Part II dated February 4, 2008, August 20, 2008, December 1, 2008, October 1, 2009, January 1, 2010, March 18, 2010, April 12, 2010 and UASNM's Form ADV Part 2A dated March 2011 also made misleading disclosures relating to its best execution process which suggested that numerous factors were being considered in selecting a broker (including trade execution, custodial services, trust services, recordkeeping, research and access to a wide variety of securities) and that it was not based "upon any arrangement between the recommended broker and UAS[NM]." In reality, Malouf was using Broker-Dealer to execute the overwhelming majority of UASNM's bond trades primarily based upon his secret agreement with Branch Manager.

12. In addition, Item 12 of UASNM's Form ADV Part II dated April 12, 2010 affirmatively misrepresented that "employees of UASNM are not registered representatives of [any broker-dealers], and do not receive any commissions or fees from recommending these services." Given Malouf's receipt of commissions from Branch Manager for recommending UASNM client bond trades through Broker-Dealer, this statement was false and misleading.

13. 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 an incentive could exist for UASNM to utilize Broker-Dealer to generate

revenue that could be utilized to fulfill the payments due to Malouf. However, this new disclosure was inadequate in that it generally referenced revenue generation for Broker-Dealer, rather than Malouf's plan to receive all of the commissions from UASNM's bond trading pursuant to an agreement with Branch Manager.

14. UASNM's misstatements and omissions regarding Malouf's receipt of commissions from Branch Manager were material because Malouf's conflict of interest led him to execute bond trades through Branch Manager and Broker-Dealer even where this may not have been in the best interests of UASNM clients.

UASNM Made Misleading Claims on Its Website

15. Between 2008 and 2011, UASNM's website made the following statements:

“Uncompromised Objectivity Through Independence: UAS[NM] is not owned by any ‘product’ company nor compensated by any commissions. This allows us to provide investment advice void of conflicts of interest. UAS[NM] may place trades through multiple sources, ensuring that best cost/service/execution mix is met for clients.”

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

16. Given Malouf's agreement with Branch Manager to receive all commission payments from UASNM client transactions through Broker-Dealer, these statements on UASNM's website were materially false and misleading because: (i) UASNM's purported independence was compromised by Malouf's undisclosed incentives to place trades through Broker-Dealer; (ii) Malouf was in fact compensated by commissions; (iii) Malouf's receipt of commission-based compensation presented a material conflict of interest; and (iv) Malouf's undisclosed conflict caused UASNM to not obtain competing bids from various broker-dealers, thereby causing UASNM to fail to seek best execution on certain trades.

UASNM Failed to Seek Best Execution on Bond Trades

17. Between 2008 and 2011, Malouf told other UASNM employees, including the Chief Compliance Officer, that he often obtained three competing bids in order to determine the best price prior to making bond trades. However, Malouf did not obtain competing bids. Instead, between 2008 and 2011, Malouf always selected Branch Manager and Broker-Dealer to execute bond trades on behalf of UASNM clients, and as a result, Malouf failed to follow any process for achieving best execution.

18. Because UASNM and Malouf failed to obtain competing bids from January 2008 through April 2011, UASNM clients paid higher markups and markdowns than were reasonably necessary for their transactions in approximately \$95 million in U.S. Treasury bonds and federal

agency bonds, resulting in approximately \$506,083.74 in additional markups and markdowns and interest thereon across 221 client accounts.

UASNM Failed to Adopt and Implement Reasonable Best Execution Policies and Failed Reasonably to Supervise Malouf

19. UASNM's best execution policy was not adequately tailored to its actual portfolio management. UASNM's Compliance Manual inaccurately stated in relevant part that: "UASNM does not regularly invest in any publicly traded equity securities or fixed income instruments. Instead, UASNM primarily recommends that its clients invest in mutual funds. As such, UASNM does not face the same issues relating to best execution that an adviser that regularly invests directly in equities and fixed income securities." In fact, in each year between 2008 and 2011, UASNM made between \$30 million and \$40 million in fixed income investments on behalf of clients.

20. UASNM's Compliance Manual generally required it to follow an unspecified process to seek best execution of client trades. However, UASNM failed to follow any process to seek best execution for fixed income trades.

21. Also, from 2008 through 2011, UASNM did not conduct any periodic review of its efforts to seek best execution for fixed income trading, or maintain any related documentation.

22. Finally, although UASNM's Compliance Manual stated that the Investment Committee was responsible for making trading decisions, in fact, fixed income trading decisions were made primarily by Malouf. UASNM did not assign anyone to supervise Malouf or the trading process generally. In practice, no UASNM employee directly supervised Malouf during his day-to-day execution of client bond trades. Moreover, no supervisor subsequently reviewed Malouf's trades or his purported bid process as to best execution. As a result, Malouf operated entirely without supervision as to his bond trading.

Findings

23. As a result of the conduct described above, UASNM willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

24. As a result of the conduct described above, UASNM willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

25. As a result of the conduct described above, UASNM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which prohibit publishing,

circulating, or distributing advertisements containing untrue statements of material facts or that were otherwise false or misleading.

26. As a result of the conduct described above, UASNM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

27. As a result of the conduct described above, UASNM failed reasonably to supervise Malouf, within the meaning of Advisers Act Section 203(e)(6), with a view to preventing violations of the securities laws.

Undertakings

Respondent has agreed to the following undertakings:

28. Notice to Advisory Clients: Within thirty (30) days of entry of this Order, Respondent shall provide a copy of the Order via mail, email, or other such method as may not be unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff, to each of the Respondent's clients that have existed from January 1, 2008 to the date of the entry of this Order.

29. Compensatory Payment to Affected Clients: 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 (the "Compensatory Payment"). UASNM undertakes to make the Compensatory Payment in accordance with and subject to any limitations under the settlement agreement under which the Escrow Account was established (including any limitation or prohibition that may be ordered by the State Court).

30. Independent Compliance Consultant. Respondent has undertaken:

- a. to hire, within 90 days of the Order, an Independent Compliance Consultant not unacceptable to the staff of the Commission. Respondent shall require the Independent Compliance Consultant to review the Respondent's compliance program, including its policies relating to supervision and best execution. Respondent shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to any of its files, books, records and personnel as reasonably requested for review; provided, however, that Respondent need not provide access to materials as to which Respondent may assert a valid claim of the attorney-client privilege. The Independent Compliance Consultant shall maintain the confidentiality of any materials and

information provided by Respondent, except to the extent such materials or information are included in the Report described below;

- b. to require that, at the conclusion of the review, which in no event shall be more than 180 days after the date of the Order, the Independent Compliance Consultant shall submit a Report to Respondent and the staff of the Commission. The Report shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendation for changes in or improvements to policies and procedures, and a procedure for implementing the recommended changes in or improvements to the procedures;
- c. to adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that within 30 days after receipt of the Report, Respondent shall in writing advise the Independent Compliance Consultant and the staff of the Commission of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Respondent considers unnecessary or inappropriate, Respondent need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose;
- d. that as to any recommendation with respect to the policies and procedures of Respondent on which Respondent and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 60 days after Respondent's receipt of the Independent Compliance Consultant's Report. In the event Respondent and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the staff of the Commission, Respondent will abide by the determinations of the Independent Compliance Consultant; provided, however, that Respondent may petition the Commission staff for relief from the recommendation;
- e. that Respondent (i) shall not have the authority to terminate the Independent Compliance Consultant without the prior written approval of the staff of the Commission before the completion of the Report; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the staff of the Commission;

- f. to require the Independent Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement; and
- g. to preserve for a period of not less than five (5) years from the date of the Order, the first two years in an easily accessible place, any record of Respondent's compliance with the undertakings set forth in this paragraph.

31. Certifications of Compliance by Respondent: Respondent shall certify, in writing, compliance with the undertakings in Paragraphs 28 and 30 according to the timelines set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver CO 80202, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

32. Deadlines: For good cause shown, Commission staff may extend any of the procedural dates relating to the undertakings in Paragraphs 28-31. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

UASNMs Cooperation and Remedial Efforts

33. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. In determining whether to accept the Offer, the Commission has further considered the undertakings set forth in Paragraphs 28 and 29.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent UASNM's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent UASNM cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 promulgated thereunder.

B. Respondent UASNM is censured.

C. Respondent shall, within 60 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying UASNM as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver CO 80202.

D. The Commission will hold any penalties paid in this proceeding pending a decision whether the Commission, in its discretion, will seek to distribute funds or transfer them to the U.S. Treasury. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund ("Fair Fund distribution") pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Regardless of whether any such Fair Fund distribution is made, amounts

ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent shall comply with the undertakings enumerated in Paragraphs 30 and 31 above.

By the Commission.

Jill M. Peterson
Assistant Secretary