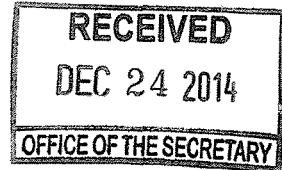


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of)
)
 DENNIS J. MALOUF,)
)
 Respondent.)

ADMINISTRATIVE PROCEEDING
File No. 3-15918

**RESPONDENT DENNIS MALOUF'S PROPOSED
STIPULATIONS OF FACT AND CONCLUSIONS OF LAW**

Proposed Findings of Fact

- 1) Joseph Kopczynski was paid \$2,139,000 by Dennis Malouf and Kirk Hudson for UAS.
88:12-13
- 2) The UASNM investment committee was comprised of Dennis Malouf, Peter Lehrman, Kirk Hudson, and Matt Keller from 2008 to 2011.
91:16-21
- 3) 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.
98:2-7
98:23-99:1
266:11-12
- 4) Supervision of UASNM's bond trading was limited to analysis and/or review performed by ACA.
99:7-10
- 5) There have been no complaints, internal or external, regarding the quality, propriety, or suitability of any particular bonds purchased by UASNM for customers.
99:18-20
- 6) Kirk Hudson's understanding that Dennis Malouf placed 90% of bond trades for UASNM was formed in the course of the state litigation and the SEC enforcement action. His basis for this understanding is his knowledge of the "kinds of bond trades" that Mr. Malouf purportedly did or would have done, not any objective or verifiable evidence.
100:18-24
- 7) UASNM did not have information regarding the commissions paid on bond trades it placed for customers. Commissions were not reflected on the confirmations for bond trades placed by UASNM for its customers.
110:24-111:1
118:5-7
228:18-20

- 8) UASNM did not develop an understanding that the markups on bond trades for its customers were purportedly excessive until after Malouf was terminated during the state court lawsuit.
111:6-9
188:17-22
- 9) UASNM's California office closed in or around March 2008.
131:3-5
- 10) 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.
132:14-21
- 11) UASNM disclosed that Dennis Malouf might earn commission from RJFS trades prior to 2008.
133:3-7
- 12) ACA Compliance Group would conduct audits of UASNM and then use the results of audits to suggest and/or prepare updates to UASNM's Forms ADV.
137:19-22
- 13) 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. The payments from Maurice LaMonde to Dennis Malouf were not a secret.
139:25-140:7
140:12-14
240:15-16
284:19-22
- 14) Kirk Hudson knew that commissions on transactions were a source of revenue for Branch 4GE.
284:23-25
- 15) Kirk Hudson never investigated payments between Dennis Malouf and Maurice LaMonde, or disclosed such payments to ACA.
140:15-141:8
- 16) 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
240:5-9
- 17) The first time Kirk Hudson read the ADV instructions was when Dennis Malouf took over as CCO in 2011.
143:12-13
- 18) ACA prepared UASNM's compliance manual which was intended to keep UASNM in compliance with SEC regulations.
164:11-15
230:10-12

- 19) Kirk Hudson knew that UASNM was regularly investing in fixed income instruments in April of 2010, which was contrary to statements in the UASNM compliance manual.
167:4-18
- 20) Kirk Hudson knew that UASNM was not following UASNM's written procedures regarding summarizing reviews related to best execution in written format.
168:4-9
- 21) 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.
168:10-169:3
- 22) 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.
169:4-16
- 23) 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.
170:10-14
- 24) Kirk Hudson signed off on the February 2008 UASNM Form ADV, and attested to its truth and accuracy with knowledge that it contained inaccurate statements.
177:25-179:23
286:18-287:2
- 25) Kirk Hudson knew that securities were frequently bought on behalf of UASNM customers through RJFS, which was contrary to language in the August, 2008 and October 2009 UASNM Forms ADV, and he attested to the truth and accuracy of those Forms ADV anyway.
182:25-183-8
278:3-7
- 26) UASNM retained Capital Forensics and Steve McGinnis to analyze bond markups and review for best execution.
191:22-24
- 27) Kirk Hudson has an MBA from the University of Chicago and holds a Certified Financial Analyst designation and a Series 65 license.
199:10-201:15
- 28) 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.
202:9-14
203:7-17
222:5-9

- 40) Joseph Kopczynski has a financial interest in National Advisors Trust Company.
248:5-13
- 41) Joseph Kopczynski has a financial interest in Secured Partners and Secured Partners II,
and is the managing member
250:3-14
- 42) Kirk Hudson does not perceive ownership of NATC shares as potential conflict of
interest.
249:8-10
- 43) Kirk Hudson knew payments from Maurice LaMonde to Dennis Malouf were for
significant amounts
253:19-254:6
- 44) Kirk Hudson was aware in 2007 that language on the UASNM website stating that it
was "void of conflicts of interests" was potentially misleading, and did not take any
action.
257:19-258:20
260:10-15
- 45) Kirk Hudson attested to the truth and accuracy of Forms ADV for UASNM that
omitted required disclosures regarding members of the UASNM investment
committee.
279:12-280:4
307:9-25
- 46) Disclosures on UASNM Forms ADV stating that employees might receive financial
compensation from RJFS did not specify which employees of UASNM might receive
compensation. UASNM customers would not know whether or not Dennis Malouf was
one such employee.
280:21-281:3
- 47) 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. Kirk Hudson signed attested to the truth and accuracy of these Forms ADV
despite knowledge that a potential conflict of interest existed as a result of this financial
arrangement.
288:24-289:15
- 48) 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.
291:8-292:14
- 49) Kirk Hudson believes Joseph Kopczynski was responsible for disclosing UASNM's
receipt of management fees from RJFS on UASNM's Forms ADV.
306:14-17
- 50) As CCO, Joseph Kopczynski was supposed to be monitoring for short term trading in
client's accounts.
a. 310:22-25

- 51) 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 owed to Dennis Malouf 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.
325:14-326:7
- 52) Analysis and recommendations made to UASNM by Steven McGinnis were based upon representations that Dennis Malouf did all of the bond trades. Mr. McGinnis did not independently determine which trades were directed by Dennis Malouf and which trades were directed by others at UASNM.
437:16-20
438:24-439:2
446:19-447:2
- 53) Dr. Gary Gibbons did not know, confirm, or determine whether Dennis Malouf placed any specific trade that was part of his expert analysis.
508:1-4
- 54) Mr. McGinnis has no prior experience trading bonds for customers as an investment adviser.
431:15-17
- 55) 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.
454:23-455:4
- 56) 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.
466:22-467:11
- 57) Dr. Gibbons' expert opinion does not consider or account for the conduct of ACA Compliance Group or Joseph Kopczynski.
511:7-13
- 58) 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.
521:18-522:4
- 59) 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.
525:9-526:23
- 60) UASNM's bond trades were not placed in the interdealer market.
538:12-14
539:14-15
- 61) Dr. Gibbons, in analyzing the trades at issue, did not know whether they were principal or agency transactions.
542:3-20

62) It is not Dr. Gibbons' opinion that an investment adviser must obtain multiple bids from multiple broker-dealers on every bond trade.

548:19-22

550:21-551:1

63) 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.

552:15-18

Proposed Conclusions of Law

1) There are no published SEC guidelines defining what excessive markups or commissions would be on bonds.

526:21-23

2) There are no rules or regulations establishing what amount constitutes an excessive markup or commission on bond trades.

454:1-5

3) 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.

454:5-16

457:23-25

555:2-8

4) It is within the scope of a 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.

436:10-437:4

447:6-14

5) 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.

450:2-6

6) It is within the scope of a chief compliance officer's duties to review and approve the content posted on a firm's website

449:10-16

7) It is within the scope of a chief compliance officer's duties to review and assist in the drafting of a firm's Forms ADV, and to ensure their accuracy.

449:17-23

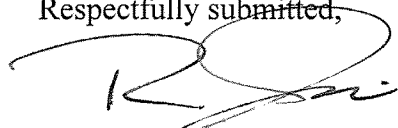
8) It is within the scope of a chief compliance officer's duties to ensure that the policies and procedures laid out in a firm's compliance manual are being implemented and followed, and that the policies and procedures reflect the activities of the firm.

450:14-20

545:13-16

- 9) 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.
451:3-13
- 10) An investment adviser need not seek the lowest commission to achieve best execution. The lowest possible commission is not the determinative factor.
457:7-11
532:4-8
- 11) An investment adviser must consider a number of qualitative and quantitative factors when trying to achieve best execution, not just the amount of commission.
457:12-15
- 12) As a registered representative Maurice LaMonde was responsible for ensuring that payments made pursuant to the purchase of practice agreement complied with that agreement and the regulations governing it.
460:2-6
- 13) A registered representative or a broker-dealer generally determines how much markup or commission to charge on bond transactions it places.
466:1-6
- 14) Mr. Hudson and Mr. Kopczynski had an obligation to disclose conflicts of interest that existed at UASNM that they were aware of.
455:22-456:13
- 15) 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.
476:9-12
- 16) 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.
476:13-17

Respectfully submitted,



ATTORNEYS FOR RESPONDENT
DENNIS J. MALOUF

