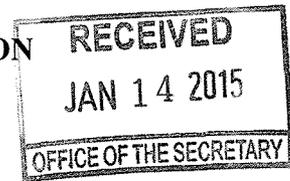


**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING
File No. 3-15918**

In the Matter of

DENNIS J. MALOUF,

Respondent.

**ENFORCEMENT DIVISION'S PROPOSED
ADDITIONAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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I. Introduction

Under Judge Patil's December 22, 2014 Order, on January 5, 2014, the Division of Enforcement ("Division") filed the parties' Stipulated Findings of Fact and Conclusions of Law, comprising 393 Findings of Fact and 28 Conclusions of Law, which Judge Patil incorporated into his Order on Stipulations and Transcript Corrections dated January 8, 2015. Under that same December 22, 2015 Order, the Division files these Proposed Findings of Fact and Conclusions of Law to supplement the stipulated findings and conclusions and to support its concurrently filed Post-Hearing Brief.

II. The Division's Claims Against Malouf

The Division alleges that from 2008 to May 2011, Respondent Dennis Malouf acted as an unregistered broker in violation of Section 15 of the Securities Exchange Act of 1934 ("Exchange Act"). It also alleges that he violated Section 206 of the Investment Advisers Act of 1940 ("Adviser's Act"), Section 17(a)(1) and (3) of the Securities Act of 1933 ("Securities Act"), and Section 10b of the Exchange Act and Rule 10b-5 thereunder by employing any device, scheme or artifice to defraud and/or engaging in any act, practice, or course of business which operated as a fraud or deceit upon his advisory clients. The Division further alleges that Malouf violated Section 207 of the Advisers Act by willfully making untrue statements of material fact or omitting to state a material fact required to be stated in a report filed with the Commission. The Division also alleges, in the alternative, that Malouf aided and abetted and caused UASNM's violation of Sections 206 and 207 of the Advisers Act. Finally, the Division alleges that Malouf aided and abetted and caused UASNM's violation of Section 206(4) of the Adviser's Act and Rule 206(4)-

1(a)(5) thereunder by providing substantial assistance to UASNM materially misleading advertising.

III. Proposed Findings of Fact

A. Securities Exchange Act § 15(a)(1): Unregistered broker or dealer

1	The bond transactions at issue in this case are securities transactions.
	<p>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”). Pre-Trial Joint Stipulation 1, FOF #281.</p> <p>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 (<i>see</i> Section 3(a)(12)(B)(ii)). Pre-Trial Joint Stipulation 2, FOF #282.</p> <p>United States Treasury bonds are “government securities” as defined by Section 3(a)(42) of the Securities Act. Pre-Trial Joint Stipulation 3, FOF #283.</p>
2	From 2008 to May 2011, Malouf regularly participated in securities transactions at key points in the chain of distribution.
	<p>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. Pre-Trial Joint Stipulation 4, FOF #284.</p> <p>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. Pre-Trial Joint Stipulation 5, FOF #285.</p> <p>During 2008 to May 2011, Malouf was CEO and President of UASNM, a registered investment adviser, and he was an advisory representative for UASNM. Pre-Trial Joint Stipulation 6, FOF #286.</p> <p>During 2008 to May 2011, Malouf solicited clients on behalf of UASNM. Pre-Trial Joint Stipulation 7, FOF #287.</p> <p>Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers. Pre-Trial Joint Stipulation 8, FOF # 288.</p>

3	<p>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.</p>
	<p>Pre-Trial Joint Stipulation 12, FOF #292.</p>
4	<p>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.</p>
	<p>Pre-Trial Joint Stipulation 13, FOF #293.</p>
5	<p>From 2008 into 2011, Lamonde made a series of ongoing payments to Malouf for the RJFS branch.</p>
	<p>Pre-Trial Joint Stipulation 14, FOF #294.</p>
6	<p>Lamonde paid close to 100% of the commissions for Malouf's bond trades to Malouf.</p>
	<p>Q But what I'm trying to reconcile and understand is, it sounds like your methodology for making payments to Mr. Malouf was actually to pay him close to 100 percent of the --</p> <p>A Bond trades.</p> <p>Q -- bond trades, correct?</p> <p>A Yes.</p> <p>Q So that isn't 40 percent of the branch revenue. And it seems to be tied, actually, to the bond trades. So what you were actually doing was</p>

giving Mr. Malouf close to 100 percent of the income from the bond trades, correct?

A Just the bond trades.

Q Just the bond trades, correct?

A Right.

Q But that wasn't your agreement, that's your testimony?

A I'm sorry, say that again.

Q You are essentially admitting, yes, I did try to pay Mr. Malouf close to 100 percent of the bond trade revenue, but I didn't have that agreement with him. I had this 40 percent agreement and then I had a prepayment arrangement, but I never kept track of it. I hoped it would work out.

A That's true.

Q That's --

A Poor business, but it's true.

Q Putting aside the agreement, would you agree with me that the reality of what happened is that you passed along all or almost all of the commissions that Mr. Malouf made from Esymoud James bond trading on behalf UASNDM back to Mr. Malouf?

A Yes.

Exhibit 239 – Lamonde Tr. at 204:16-205:24; Exhibit 203; FOF #20.

7

Malouf thought that the commissions from his bond trades were his money.

Q What are those payroll advances for?

A Again, it would have been to pay Dennis.

Q Once again, this situation where Malouf makes a trade, he knows he has money coming to him, and he can't wait even a couple weeks to get the money? He wants the money right away?

A Yes.

Q Let's talk about that for a little bit.

A His idea was it's his money and he could get it when he wanted it.

Q That was his understanding?

A Yeah.

Exhibit 239 – Lamonde Tr. at 195:1-12.

8	Lamonde's payments to Malouf were based on bond-trade commissions from the accounts that Malouf sold to Lamonde (44Y5).
	<p>But that doesn't answer for me how much you decided to pay beyond the 40 percent. How much did you decide to prepay? And your testimony was something like, well, it's based on the commissions. And that's not specific enough for me. How did you decide how much to prepay, based on the amount of commissions you were getting? Do you understand my question?</p> <p>A Yes.</p> <p>Q What is the answer?</p> <p>A It was based on the commissions generated from 44Y5.</p> <p>Q Those are the accounts that Mr. Malouf transferred to you, correct?</p> <p>A Correct.</p> <p>Exhibit 239 – Lamonde Tr. at 184:1-15; FOF # 221.</p>
9	Malouf used Raymond James to trade bonds because he got paid for those bond transactions, and he was not ashamed of receiving \$1.1 million in commissions because Malouf thought he did a good job.
	<p>Q. Okay. And in fact, one of the reasons you chose to trade through Raymond James was because you got paid; right?</p> <p>A. Yes.</p> <p>Q. And I believe you previously testified that you were not ashamed of receiving any of the commissions from the bond trades that you did do, and the revenue of the branch because you did a good job?</p> <p>A. That is correct.</p> <p>Q. And do you acknowledge that between 2008 and May of 2011, you received approximately 1.1 million dollars from Mr. Lamonde?</p> <p>A. Approximately.</p> <p>Malouf Trial Tr. 11/20/14 at 941:25-942:12; FOF #176; FOF #177.</p>

10	Lamonde told Calhoun that the checks from Lamonde to Malouf were commissions from Raymond James.
	<p>Q. And what was your understanding of what those checks related to?</p> <p>A. I was told they were commissions from Raymond James.</p> <p>Q. Who told you that?</p> <p>A. Well, when I first started there, Dennis told me that his big clients were Raymond James's clients and then Maurice told me that those were commission checks from Raymond James.</p> <p>...</p> <p>Q. Did you ever have any discussions with Maurice Lamonde about these checks?</p> <p>A. Yes, I asked him one time what they were for.</p> <p>Q. And what did he say?</p> <p>A. He said that they were commission checks.</p> <p>Malouf Trial Tr. 11/21/14 at 1243:13-1243:21---1244:22-1245:1.</p>
11	This Proposed Finding of Fact intentionally left blank.
12	In 2009 and 2010, Malouf argued with Lamonde about the amount of almost every commission check.
	<p>Q. And were the checks actually handed to you by Mr. Lamonde? How did you get the checks?</p> <p>A. 2009 and '10 definitely handed to me by Mr. Lamonde.</p> <p>Q. Okay. And do you know why Mr. Lamonde was giving you the checks as opposed to Mr. Malouf?</p> <p>A. I was under the impression so -- well, one Dennis wouldn't be there and would be calling wanting the checks deposited right away and the other is to avoid a conflict between the two of them.</p> <p>Q. What do you mean by that, to avoid a conflict?</p>

A. In 2009 and '10 they argued about the amount of the check every time one was given.

Q. And about the amount. Can you be more specific?

A. From what I recall, Mr. Malouf wasn't happy with the amount of the check, and Mr. Lamonde would say no, that's right, that's what it is. And then they would have an argument about it, and then it would be passed to me to be deposited.

Malouf Trial Tr. 11/21/14 at 1245:5-1246:24.

13 Malouf sometimes asked Lamonde "where is my check" in the presence of at least Hudson or Calhoun.

FOF #60.

14 Lamonde Referred to the Payments he made to Malouf as Commissions on his 2008, 2009 and 2010 Tax Returns.

MALRICE L. LAMONDE, LTD. 91-2146103

Form 1120S, Page 1, Line 19
Other Deductions

AUTO EXPENSE	1,694.
PHONE	1,258.
ACCOUNTING	782.
COMMISSIONS	509,345.
INSURANCE	255.
OFFICE EXPENSE	645.
MISC PROCESSING FEES	2,132.
FAX & PRINT LEASE	2,346.
RESEARCH - PRINCIPAL	4,344.
REGISTRATION FEE-PRINCIPAL	4,208.
TRAVEL	819.
FRANCHISE FEES - PRINCIPAL	3,000.
STATE REGISTRATION	2,708.
FRANCHISE FEES - STAFF	12,600.
RESEARCH FEES - STAFF	5,088.
Total	647,127.

MALRICE L. LAMONDE, LTD. 91-2146103

Form 1120S, Page 1, Line 19
Other Deductions

INSURANCE	255.
TRAVEL - RESEARCH & COMMISSIONS	32,100.
COPY AND FAX	2,132.
TRAVEL	1,002.
ACCOUNTING	782.
ADVERT.	500.
BY MEMBERS, SOLUTIONS	122.
TELEPHONE	2,347.
OFFICE SUPPLIES	729.
RESEARCH	5,570.
PRINTING PRINT	25.
AUTO 3528 HE E, 80	1,214.
Total	39,538.

Form 1120S, Page 2, Schedule A, Line 4
Schedule A, Other Costs

COMMISSIONS	534,628.
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MALRICE L. LAMONDE, LTD. 91-2146103

Form 1120S, Page 1, Line 19
Other Deductions

COMMISSIONS	603,536.
INSURANCE	505.
EQUIPMENT RENT	2,243.
TRAVEL	1,824.
ACCOUNTING	881.
RESEARCH SERVICES	9,862.
RAYMOND JAMES OPERATING EXPENSES	12,615.
PHONE	1,612.
EMPLOYEE INSURANCE	1,433.
AUTO	3,300.
OFFICE SUPPLIES	386.
Total	438,295.

Exhibit 76, Exhibit 77, Exhibit 78; FOF #44.

15

Lamonde provided Malouf with IRS Form 1099s for the payments just as Malouf had provided his brokers with Form 1099s prior to selling the branch to Lamonde.

SCHEDULE C (Form 1040) Department of the Treasury Internal Revenue Service (99)	Profit or Loss From Business (Sole Proprietorship) Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).	OMB No. 1545-0074 2008 Attachment Sequence No. 09
Name of proprietor	Social security number (SSN)	
DENNIS J. MALOUF	[REDACTED] 7535	
A Principal business or profession, including product or service (see page C-3)	B Enter code from pages C-9, 10, & 11	
INVESTMENT BROKER	▶ 523120	
C Business name. If no separate business name, leave blank.	D Employer ID number (EIN), if any	
RAYMOND JAMES	[REDACTED] 5971	
E Business address (including suite or room no.)	[REDACTED]	
City, town or post office, state, and ZIP code	ALBUQUERQUE, NM 87110	

SCHEDULE C (Form 1040) Department of the Treasury Internal Revenue Service (99)	Profit or Loss From Business (Sole Proprietorship) Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B. Attach to Form 1040, 1040NR, or 1041. See instructions for Schedule C (Form 1040).	OMB No. 1545-0074 2009 Attachment Sequence No. 09
Name of proprietor	Social security number (SSN)	
DENNIS J. MALOUF	[REDACTED] 7535	
A Principal business or profession, including product or service (see page C-2)	B Enter code from pages C-9, 10, & 11	
INVESTMENT BROKER	▶ 523120	
C Business name. If no separate business name, leave blank.	D Employer ID number (EIN), if any	
RAYMOND JAMES	[REDACTED] 5971	
E Business address (including suite or room no.)	[REDACTED]	
City, town or post office, state, and ZIP code	ALBUQUERQUE, NM 87110	

Exhibit 238 at 10, Exhibit 14; FOF #44, FOF #48.

16

Lamonde's payments to Malouf totaled \$1,068,084.13, which equaled 99.4% of Lamonde's commissions.

Comparison of Commissions Earned by Lamonde from Malouf's Trades with Payments Made by Lamonde to Malouf			
	Lamonde Commissions	Payments by Lamonde to Malouf	Difference (Branch Commission - Amount Paid by Lamonde)
Total for First Quarter 2008	\$91,349.53	\$95,760.05	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$125,065.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.05	\$120,171.48	(37,453.43)
Total for Fourth Quarter 2008	\$85,062.95	\$108,100.00	(23,037.05)
Total for Year 2008	\$382,779.82	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.32	(14,084.39)
Total for Third Quarter 2009	\$125,761.94	\$146,640.48	(20,878.54)
Total for Fourth Quarter 2009	\$150,729.84	\$113,051.00	37,678.84
Total for Year 2009	\$352,034.89	\$366,210.25	(14,175.36)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$22,607.00	10,355.32
Total for Third Quarter 2010	\$66,813.50	\$29,786.00	37,027.50
Total for Fourth Quarter 2010	\$71,598.89	\$64,168.50	7,430.39
Total for Year 2010	\$301,426.84	\$237,742.79	63,684.05
Total for First Quarter 2011	\$37,660.27	\$14,482.00	23,178.27
Total for Second Quarter 2011	\$552.56	\$552.56	0.00
Total for Year 2011	\$38,212.83	\$15,034.56	23,178.27
TOTAL	\$1,074,454.38	\$1,068,084.13	6,370.25

Sources for Trial Exhibit 203 - Payments-Commissions Comparison:

Binder 1 - Maurice Lamonde's 2008 - 2011 Wells Fargo bank statements (contained in Testimony Exhibits 104, 105, 106, & 107)

Binder 3 - Selected Raymond James Payroll Statements for 2008 - 2011 relating to Maurice Lamonde.

Trial Exhibit 201 - Payments by Lamonde to Malouf

Exhibit 203.

17

From 2008 through May 2011, Malouf received transaction-based compensation from Lamonde for the bond transactions at issue in this case.

See Proposed Findings of Fact ##4-16.

18 The Purchase of Practice Agreement (“PPA”) between Malouf and Lamonde was signed, notarized, and provided to Raymond James in June 2010, not January 2008, the purported date noted on the front of the PPA.

THIS AGREEMENT is made and entered into this, the 2 day of JAN, 2008 by and between DENNIS MALOUF (“Seller”), a financial advisor currently registered with Raymond James Financial Services, Inc. (“RJFS”), a Financial Industry Regulatory Authority, Inc. (“FINRA”) Broker Dealer and MAURICE LAMONDE (“Buyer”), also a financial advisor currently registered with RJFS, as of the date set forth below.

IN WITNESS WHEREOF the parties hereto hereby execute this Agreement as set forth below this: 11th day of June, 2010.

(Seller signs) [Signature] Typed name, Seller
DENNIS MALOUF

(Buyer signs) [Signature] Typed name, Buyer
MAURICE LAMONDE

OFFICIAL SEAL
 KATHRYN M. JOHNSON
 Notary Public
 State of New Mexico
 My Comm. Expires Dec 1, 2010

Kathryn M. Johnson

Exhibit. 97.

19 Prior to June 2010, when asked for a written copy of the PPA, Lamonde indicated that he and Malouf were still working on it, and did not provide a signed copy.

HELLO KIRK ATTACHED IS THE PERSONAL FINANCIAL STATEMENT YOU NEEDED. I'M WORKING ON THE PURCHASE AGREEMENT AND WILL HAVE SARAH TAKE A LOOK AT IT TO MAKE SURE IT'S OK.
 ALSO SARG DOES NOT HAVE AN ACCOUNT AT RJ.

BACK A FEW YEARS AND I AM STILL WORKING ON THE AGREEMENT AND WILL SEND IT AS SOON AS WE FINISH IT.

Exhibit 60, Exhibit 94; FOF #27.

20	Lamonde admitted that he and Malouf had no written agreement until June 2010.
	<p>Q I'm just going to read from Exhibit 60. Your e-mail from May of 2009 says, "I'm working on the purchase agreement and will have Sarah take a look at it to make sure it's okay."</p> <p>A Okay.</p> <p>Q But you never did that?</p> <p>A Probably not.</p> <p>Q Okay.</p> <p>A I don't know. Again, the documentation that we did was -- with Dennis was fly by night</p> <p>Q What do you mean by "fly by night"?</p> <p>A You had to catch Dennis on the run, that kind of thing. It wasn't -- to be honest, an actual document, this was the agreement that we made. And we had known that was going to be it. And whether I put it in writing February 5th -- or February -- January of 2008 or actually had it written down in 2009 made no difference, because the agreement was the agreement.</p> <p>Q It sounds like -- I want to give you an opportunity --</p> <p>A Okay.</p> <p>Q -- right now. Did you actually enter into an agreement with Mr. Lamonde, written in 2008?</p> <p>A No.</p> <p>Q No? When did you enter into it?</p> <p>A It would appear it was going to be in June of 2010.</p> <p>Exhibit 239 – Lamonde Tr. at 163:10-164:13.</p>
21	The June 2010 PPA between Malouf and Lamonde stated that Lamonde would pay Malouf continuing commissions pursuant to IM-2420-2.
	<p>9. This Agreement shall serve as notice to Raymond James Financial Services (or subsequent FINRA Broker Dealer with which either one of the parties to this Agreement may become licensed) of the parties' agreement to pay continuing commissions/securities related fees in accordance with IM-2420-2 (or its successor provision) under the NASD Conduct Rules as contained in the NASD Manual.</p> <p>Exhibit 97 at RJFS-SEC-UASNM-000163.</p>

22	From 2008 through May 2011, Malouf's arrangement with Lamonde did not comply with IM-2420-2 because while still receiving commissions after leaving Raymond James and not registered as a broker dealer, Malouf was affiliated with an investment adviser (UASNM) and was engaged in the securities business.
	See Proposed Findings of Fact ##2-16, supra.

B. Investment Advisers Act § 206(1) and (2): employ any device, scheme, or artifice to defraud or engage in any transaction, practice or course of business which operates as a fraud or deceit

1. Malouf's failure to disclose his arrangement to receive payments from Lamonde

23	From January 2008 to May 2011, Malouf had an agreement with Lamonde under which he received payments from Lamonde that were dependent upon commissions Lamonde received from Raymond James that were generated, in whole or in part, by bond trades that Malouf directed to Lamonde and Raymond James.
	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 #175. One of the reasons Malouf chose to trade through Raymond James was because then he got paid. FOF #176.
24	Malouf's agreement with Lamonde called for Lamonde to pass along almost all of the commissions that Malouf made from RJFS bond trading on behalf of UASNM clients back to Malouf.
	<p>Q Putting aside the agreement, would you agree with me that the reality of what happened is that you passed along all or almost all of the commissions that Mr. Malouf made from Raymond James' bond trading on behalf UASNM back to Mr. Malouf?</p> <p>A Yes</p> <p>Exhibit 239 – Lamonde Tr. at 205:19-24.</p>
25	Malouf's agreement with Lamonde created a clear conflict of interest.
	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 #178.

28	<p>The statement in UASNM’s Form ADVs that employees of UASNM do not receive any commissions or fees from recommending [brokerage] services” was materially misleading given Malouf’s arrangement with Lamonde.</p>
	<p>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 #10.</p>
29	<p>UASNM’s failure to disclose that Malouf was receiving payments from Lamonde for trades routed through Lamonde’s Raymond James branch was materially misleading.</p>
	<p>At least some of UASNM’s ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8.</p>
30	<p>The statements on UASNM’s website that:</p> <p style="padding-left: 40px;">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.</p> <p style="padding-left: 40px;">And</p> <p style="padding-left: 40px;">We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients’ portfolios.</p> <p>were materially misleading in view of Malouf’s arrangement with Lamonde.</p>
	<p>At times, between 2008 and 2011, UASNM’s website made the following statements:</p> <p>“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.”</p> <p>“We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients’ portfolios.” FOF #12.</p>

	<p>Mr. Malouf previously testified that he “probably read” statements on UASNM’s website in 2008 about UASNM being independent and not charging commissions. FOF #191.</p> <p>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 #189</p>
31	<p>UASNM marketed itself as being independent and free of commissions, which was materially misleading given Malouf’s arrangement with Lamonde.</p>
	<p>UASNM marketed itself as “independent,” meaning that they were fee only and did not take commissions. FOF #129.</p>

2. Malouf’s failure to seek best execution

32	<p>UASNM’s marketing materials told clients that brokers would be recommended “based on the broker’s cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.”</p>
	<p>Clients wishing to implement UAS’s advice are free to select any broker and/or dealer that they wish and are so informed. Those Clients who wish UAS to recommend a broker will receive a recommendation based on the broker’s cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.</p> <p>Exhibit 24 at MaloufSEC000559.</p>
33	<p>An investment advisor may not rely solely on a broker’s trading platform, such as BondDesk, to fulfill his fiduciary duty of best execution.</p>
	<p>Q [McKenna] I understand that, and you’ve testified to that, I think, a couple of times today.</p> <p>My question is a simple one. Did you understand that you had the ability, as an investment advisor, to put off your best execution fiduciary duty to BondDesk?</p> <p>A [Malouf] I – no.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:1-7.</p> <p><u>3E) Use of a Single Broker to Effect Bond Trades, Even Where that Broker has Multiple Dealers’ Bid-Ask Pricing Cannot Satisfy Best Execution:</u></p> <p>Exhibit 243, Gibbons Report at 28-29.</p>

34	<p>Simply trading through a broker like Raymond James does not satisfy an investment advisor's fiduciary duty of best execution.</p>
	<p>Q [McKenna] And is your testimony that if you trade through Raymond James, and Raymond James meets its duty of best execution as a broker-dealer, then you have, as a result of that, met your fiduciary duty of best execution as an investment adviser?</p> <p>A [Malouf] I – the way you're phrasing the question I guess is on me. And I just – I don't understand. I mean, each custodian has the exact same best execution review, and if I can't rely on that information I'm not sure what I can do to rely on a – so, the answer would be, no, I guess I can't.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:14-24.</p> <p><u>3E) Use of a Single Broker to Effect Bond Trades, Even Where that Broker has Multiple Dealers' Bid-Ask Pricing Cannot Satisfy Best Execution:</u></p> <p>Exhibit 243, Gibbons Report at 28-29.</p>
35	<p>To seek best execution an investment advisor generally must obtain competing bid or ask prices from more than one broker-dealer.</p>
	<p>There is a minimum standard that must be met when considering whether or not advisors seek best execution for their clients.</p> <p>The minimum standard focuses on three basic elements:</p> <ol style="list-style-type: none"> 1. Identifying qualified broker-dealers, 2. Getting alternative bids or asks for the subject security, 3. Having a clear procedure in place to document and evaluate this process. <p>Exhibit 243, Gibbons' Expert Report at 21.</p> <p>Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?</p> <p>A [Malouf] Yes.</p> <p>Malouf Trial Tr. 11/20/2014 at 935:13-17.</p> <p>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 #133.</p>

Ciambor learned through discussions with Hudson, that UASNM 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 #145.

From: Mike Ciambor </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MCIAMBOR>
Sent: Thursday, July 28, 2011 2:59 PM
To: Joseph Kopczynski [REDACTED]
Subject: RE: Audit

Joe,

For best execution on bond transactions, we typically recommend that the adviser get multiple bids from brokers to compare the markup on the bonds which will give you an idea which counterparty is providing the best prices. On our previous reviews, we typically had been provided with examples of bid sheets with notes on the pricing available for the same or similar offerings from other brokers.

We were previously under the impression that the feedback on the pricing was being shared among the individuals involved in the portfolio management and trading process, but based on a conversation I had with Kirk a few weeks ago this may not have been as collaborative a process as I first thought. We can work on adding formal procedures to the manual identifying the documentation that needs to be maintained and the personnel that will be involved in the process.

Exhibit 20.

36

An investment advisor's fiduciary duty of best execution is different than a broker-dealer's lesser duty.

As a prelude to the discussion of how investment advisors should seek best execution I offer a short discussion of how broker-dealers seek best execution. I do this to emphasize that broker-dealers are subject to different, lower standards than investment advisors because they do not owe a fiduciary duty to their clients.

Exhibit 243, Gibbons' Expert Report at 20, see also discussion in Sections 3A and 3B on pages 20-23.

Malouf's expert witness, Wolper, admits that Raymond James satisfying its duty of best execution does not mean that Malouf satisfied his. FOF #243.

Malouf's expert witness, Denigris admits that Malouf is not governed by Raymond James's markup/markdown policy. FOF #252.

Q [McKenna] I understand that, and you've testified to that, I think, a couple of times today.

	<p>My question is a simple one. Did you understand that you had the ability, as an investment advisor, to put off your best execution fiduciary duty to BondDesk?</p> <p>A [Malouf] I – no.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:1-7.</p> <p>Q [McKenna] And is your testimony that if you trade through Raymond James, and Raymond James meets its duty of best execution as a broker-dealer, then you have, as a result of that, met your fiduciary duty of best execution as an investment adviser?</p> <p>A [Malouf] I – the way you’re phrasing the question I guess is on me. And I just – I don’t understand. I mean, each custodian has the exact same best execution review, and if I can’t rely on that information I’m not sure what I can do to rely on a – so, the answer would be, no, I guess I can’t.</p> <p>Malouf Trial Tr. 11/20/2014 at 1147:14-24.</p>
37	<p>Malouf told others that he sought multiple bids for his bond trades.</p>
	<p>Q [McKenna] And how did that policy that UASNM conveyed they were employing compare or comport with your understanding of best execution applications?</p> <p>A [Ciambor] It appeared to us that they were seeking clarification on pricing in accordance with industry best practice, requesting multiple bids from multiple broker-dealers or other counterparties.</p> <p>Q And who at UASNM told you that that was their policy, to seek multiple bids?</p> <p>A I believe that came through discussions with Mr. Hudson and Mr. Malouf.</p> <p>Malouf Trial Tr. 11/19/2014 at 726:19-727:4.</p> <p>Q. [McKenna] Okay. So, you testified that you didn’t think that Mr. Malouf shopped for the best price; right?</p> <p>A. [Keller] That he said he did And looking backwards, I don’t think he did.</p> <p>Malouf Trial Tr. 11/20/2014 at 1203:2-6.</p> <p>Q [McKenna] And did Mr. Malouf ever represent to you, or to anybody else</p>

	<p>at UASNM, in your presence, that he was utilizing a process of soliciting multiple bids on his bond trades?</p> <p>A [Hudson] Yes. He had opened some DVP accounts in 2008 with – I believe there were three of them. UBS, I think Smith Barney and Morgan Stanley. And we had existing ones with Morgan Keegan and Griffin Kubiak, Stevens and Thompson, maybe Crews & Associates at the time too. So he opened some accounts for that purpose, for the ability to either buy bonds there or at least check with those folks, to verify, and you know, indicated – Mr. Malouf had indicated to us that he, you know, knew the markets, knew what was appropriate, what was customary, in terms of markups. And he sometimes charged a quarter, sometimes a half, sometimes a point, depending upon what was appropriate for that security.</p> <p>Malouf Trial Tr. 11/17/2014 at 169:4-22.</p>
38	<p>Malouf’s own expert witness acknowledges that Malouf’s practice was not to obtain competitive quotes when placing bond trades through Raymond James.</p>
	<p>19. While Mr. Malouf admitted that he did not obtain competitive quotes from three different broker-dealers each time he placed an order for execution with Raymond James, he was not required to do so.</p> <p>Exhibit 579, Wolper Expert Report at 8, ¶ 19.</p>
39	<p>Malouf did not shop around for bids from competing brokers when executing bond trades on behalf of UASNM clients.</p>
	<p>UASNM client accounts. There is no evidence in the case that Malouf regularly obtained multiple price quotes when buying or selling bonds, and Malouf admits that he did not. Similarly there is no indication that Malouf ever bargained for lower prices or for lower commissions. Instead, between 2008 and 2011, Malouf appears to have executed almost all of his clients’ trades through RJFS in order to obtain payments from Lamonde.</p> <p>Exhibit 243, Gibbons’ Expert Report at 4, ¶ 1.</p> <p>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 (Exhibit 195, video of St. Tr. at 291:6-18) (Exhibit 194 is written transcript) where he testified as follows:</p> <p>“Q: For best execution, couldn’t you shop around and get a lower level commission for your client?”</p>

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 #174.

Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?

A Yes.

Q Would you also acknowledge that you did not do that?

A No.

Q You would not acknowledge that?

A I will not acknowledge that.

Q Do you recall testifying differently when you met with Mr. Mulhern and provided investigative testimony?

A I don’t recall.

MR. McKENNA: Can we pull up his transcript, which is – what’s the exhibit number, 231?

MR. BRICKELL: Yes.

MR. McKENNA: And let’s go to page 124. Starting at line 8 and we’re going to go to line 19. I’m going to read. This is the question. “At what point in the process would you possibly get bids from other broker-dealers?” Your answer: “I would spot check. It wasn’t a situation where I got three bids, like I should have done. Okay? I read best execution, and I looked at the information. I called Raymond James about best execution. They explained how they did it. And it satisfied everything that I thought was necessary to get best execution. There was no formal format. I did check from time to time, but there was nothing religiously set up to say here are three bids. Let’s take this one.” Did I read that correctly?

A Yes.

MR. McKENNA: You can take that down, Tim.

Q Mr. Malouf, would you acknowledge that you did not send out bids when you wanted to buy a bond for a UAS client, nor would you send out asks when you wanted to sell a bond?

A No.

Q You would not acknowledge that?

A I would not.

MR. McKENNA: Can we pull up his transcript at page 127, please. And let's go to lines 14 to 19. Q And I'm just going to read from your transcript again. "Q. All right. But other than that process, what else did you do to spot check?" Your answer: "I mean, that's it. I wish I could say I had the bid ask, but I just didn't. I didn't send it out for a bid or a quote, if that's where you're headed." Did I read that correctly?

A You did.

Malouf Trial Tr. 11/20/2014 at 935:13-937:16.

Q [McKenna] And did you ever come – strike that. As of today, in your opinion, Mr. Hudson, did Mr. Malouf in fact seek multiple bids on the bond trades that he was executing on behalf of UASNM clients?

A There's no documentation that he did –

Q Did you look for any documentation?

A Yes, we did. Yes. And there's – the only documentation of a three-bid process were, you know, from other advisers. There are some notations in there that, you know, that he had made a phone call here and there, but it's not consistent and pretty infrequent. He may have done it. Mr. Malouf was not known for being a heavy documenter. But there's no written documentation of it –

Q Okay.

A -- or very little.

	<p>Malouf Trial Tr. 11/17/2014 at 170:9-25.</p> <p>Q. [McKenna] Okay. So, you testified that you didn't think that Mr. Malouf shopped for the best price; right?</p> <p>A. [Keller] That he said he did and looking backwards, I don't think he did.</p> <p>Malouf Trial Tr. 11/20/2014 at 1203:2-6.</p>
40	<p>Malouf acknowledged that had he shopped around among brokers for lower bids on bond sales he probably could have gotten a lower bid for his clients.</p>
	<p>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 (Exhibit 195, video of St. Tr. at 291:6-18) (Exhibit 194 is written transcript) where he testified as follows:</p> <p>"Q: For best execution, couldn't you shop around and get a lower level commission for your client?</p> <p>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.</p> <p>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.</p> <p>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 #174.</p>
41	<p>The evidence showed that in at least some cases, shopping bond trades among brokers resulted in a broker offering a better price than Raymond James.</p>
	<p>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 #204.</p>
41-2	<p>By shopping bond trades with other brokers UASNM adviser Matt Keller was at times able to get RJFS to come down to meet a lower price.</p>
	<p>>> FROM: MATTK <GoldMine User> >> TO: MONICAP <GoldMine User> >> DATE: Thu, 17 Apr 2008 10:54:23 -0600</p> <p>>> RE: bonds to place in Schwab (New Mexico Hospital accounts)</p>

	<p>>> Hi, Monica. >> Today, I worked with Raymond James to purchase a non-callable US Treas >> bond that matures in September 2011. We purchased 1,500 bonds of CUSII >> 912828FU9. The bonds should be placed in the following Schwab accounts: >> accordingly: >> 1) 8115-9840: 600 bonds >> 2) 1147-7655: 500 bonds >> 3) 2836-3801: 400 bonds >> We paid \$1,606,673.67 for these 1,500 bonds (price of 106.89062). Ty >> Kattenhorn of Smith Barney provided me a quote this morning of 107.055 >> for the same bond and RJ matched Schwab's price of 106.89062. >> Please let me know if you have any questions. Mo said that he will deliver >> the confirm to you tomorrow. I believe that Schwab Value Advantage will >> need to be sold in the above accounts. >> Thanks, >> Matt</p> <p>Exhibit 341.</p>
42	<p>Malouf traded through Raymond James as opposed to other brokers because then he got paid.</p>
	<p>From 2008-2011, Malouf did the majority of his bond trades on behalf of UASNM clients through RJ. FOF #173.</p> <p>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 #175.</p> <p>One of the reasons Malouf chose to trade through Raymond James was because then he got paid. FOF #176.</p>
43	<p>Malouf did not shop for the best price for the majority of his bond purchases, he simply purchased from Raymond James.</p>
	<p>Proposed Finding of Fact #39.</p>
44	<p>UASNM's trade blotter (Exhibit 30) shows that between January 2008 and May 2011, it traded only \$16,789,390.30 in bonds through other brokers. Thus, 89% of UASNM's bond trades were made through RJFS during the relevant period.</p>

<u>Date</u>	<u>Bond Name</u>	<u>Non RJ Trades Amount</u>	<u>Non RJ Trades Yearly Total</u>	<u>RI Bond Trades Yearly Total</u>	<u>Total UASNM Bond Trades Yearly Total</u>	<u>% of Trades Through RJ</u>
	MCKINLEY CNTY NM GROSS RCPTS	\$53,729.00				
	US TREAS NOTE	\$100,392.00				
	FED HOME LN BK	\$107,597.00				
	FED HOME LN BK	\$255,937.68				
	US TREAS NOTE	\$206,460.94				
	US TREAS NOTE	\$600,326.11				
	FED HOME LN BK	\$85,851.20				
	FED HOME LN BK	\$270,582.50	\$6,946,765.35	\$46,634,651.94	\$53,581,417.26	87%
2011						
	FED HOME LN BK	\$213,964.00				
	FED FARM CR BK	\$612,658.00				
	US TREAS NT	\$132,030.25				
	FED HOME LN BK	\$557,800.75				
	FED HOME LN BK	\$1,505,744.61				
	FED HOME LN BK	\$54,513.00				
	FED HOME LN BK	\$630,330.00				
	YOUGH SCH DIST PA	\$47,971.50	\$3,755,292.11	\$6,854,750.42	\$10,610,042.53	65%
		\$16,789,390.30	\$16,789,390.30	\$140,819,708.15	\$157,609,098.45	89%
<p>Source for Total Exhibit 207 - Raymond James Trade Proportion Analysis. Binder 4 - Non RJ Bond Trades (Malouf/BLC 0001/23-Malouf/BLC 0003/25) in Testimony Exhibit 30 Total Exhibit 207 - UASNM (U.S., U.S. Government Agencies, Municipals, & Corporate) Raymond James Trades.</p>						
Exhibit 207 at 2 (Summarizing Non-RJ Bond Trades in Exhibit 30).						
45	<p>Mr. Wolper's (Mr. Malouf's expert) opinion that an investment advisor need not shop amongst competing brokers should be afforded little to no weight because Mr. Wolper has no investment adviser expertise and conflates an investment advisor's fiduciary duty of best execution with a broker-dealer's lesser duty.</p>					
	<p>Wolper never provided legal advice to investment adviser on best execution issue. FOF #233.</p> <p>Wolper never provided expert opinions regarding best execution for investment advisers. FOF #234.</p> <p>Wolper does not hold any securities license. FOF #235.</p> <p>Wolper never worked as a regulator of an investment adviser. FOF #236.</p> <p>Wolper never traded bonds for a client. FOF #237.</p> <p>Wolper never managed a bond fund. FOF #238.</p> <p>Wolper does not believe there is a difference between the fiduciary duty applied to broker dealers versus investment advisors as to best execution. FOF #242.</p>					
46	<p>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.</p>					

	FOF #137.
47	The payments from Lamonde and incentive to execute bond trades through RJ created a best execution issue in Ciambor's mind.
	FOF #153.

3. Malouf's Failure to Seek Best Execution Resulted in Payment of Excessive Commissions

48	Malouf directed the majority (between 60% and 95%) of the 81 bond trades identified by Dr. Gibbons.
	Malouf directed no more than 48 to 77 of the 81 trades analyzed by Dr. Gibson (60% and 95%). FOF #77.
49	Malouf himself believes that a commission of over one percent on a Treasury or Agency bond trade of \$1,000,000 or more is excessive.
	<p>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 50 percent more than that amount. FOF #43.</p> <p>In the 2008-2011 time period, Malouf understood that Lamonde would pay at most 1 percent commission on a bond trade, or less if Raymond James' institutional grid suggested it. FOF #184.</p> <p>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 #186.</p>
50	For a treasury bond trade of over \$1 million an appropriate commission would be one-half of one percent and go down from there.
	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 #186.
51	Exhibit 553 is a July 2, 2008 e-mail from Monica Pineda to Matt Keller and Kirk Hudson reflecting one bond purchase of at least \$1,000,000 and another of

	<p>\$522,825 that Mr. Malouf was involved with.</p>
	<p>From: MONICAP Sent: Wednesday, July 2, 2008 4:57 PM To: MATTK Cc: KIRK Subject: re: 7-02-08 Global Transaction Ledger</p> <hr/> <p>Kirk, The below is the two bond purchases I worked with Moe to purchase into Harley's account.</p> <p>Monica</p> <p>>> Ran this week's GTL. >> Only action item is that Kirk is confirming what activity occurred with >> Harley Ventures Inc. / Yearout on 6-25-08 and 6-26-08. Two "Money >> Transfers" occurred: The one on 6-25-08 is too large and shows only >> asterisks (so must be at least \$1,000,000+) and the one on 6-26-08 is for >> \$522,855. >> Monica: Do you mind placing this as a follow-up to ask Kirk on Monday, >> 7-07, to confirm what he found? >> Thanks, >> Matt</p> <p>Exhibit 553.</p> <p>Q [McKenna] And then can you explain why you think Mr. Malouf would be involved in this bond transaction?</p> <p>A [Hudson] Well, because knowing these accounts, you know, he bought – I know he bought these bonds. I follow this account here, I know, pretty closely. And I never, you know, bought it, done any kind of trade away with Raymond James for that account. And nobody else would because it's not their client.</p> <p>Malouf Trial Tr. 11/17/2014 at 122:12-19.</p>
52	<p>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%).</p>

RAIRBLL AE TRADE BLOTTER		RAYMOND JAMES & ASSOCIATES, IN		V 30.01								
DATE 06/06/08		PA BLOTTER RECORD REPORT		PAGE 1								
RUN TIME 04:57:22		BY ASSIGNED OFFICE		RUN DATE 06/07/08								
OFFICE : 4G-R MAURICE LAMONDE, MGR		4495 MAURICE LAMONDE		FREQUENCY: W WEEKLY								
SETT	ACCOUNT	ACCOUNT	B	SHARES	DESCRIPTION	PRICE	PRINCIPAL	GROSS	STAND	AE	AE	GLB
DATE	NUMBER	SHORT NAME	S				AMOUNT	COMM.	COMM.	CHARGE	NET	MCH T
06/26	7741	UAS FIDELITY	B	500000	ALBUQUERQUE N MEX. GO GENL PUR		522855.00	5500.00		.00	.00	0219T
					ENTRY ONLY SERIES A							
					YTM3.346							
					PRICE: 104.507							
					RATE/MATY: 4% 07/01/16							
06/25	7741	UAS FIDELITY	B	1490000	NEW MEXICO ST SEVERANCE TAX, S	103.21	1537829.00	15212.90		.00	.00	0219T
					TAX BBS BOOK ENTRY ONLY							
					WKCS.5/P100.00/D070113							
					RATE/MATY: 4% 07/01/15							

Exhibit 29 at RJFS-Malouf-000159.

53 The Division's expert in this matter, Dr. Gary Gibbons, identified 81 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 #39.

54 Respondent offers no expert testimony regarding a competing range of reasonable commissions on the bond trades analyzed by Dr. Gibbons.

Wolper does not offer an opinion on appropriate commission range or whether particular commissions [were] reasonable. FOF #241.

55 Dr. Gibbons found that UASNM clients were charged excess commissions of between \$442,106 and \$693,804 on the 81 bond trades he analyzed.

industry standard. Figure A5-11 in Appendix V captures this graphically. On just the 81 trades I examined in preparing this report the calculation of harm is between \$693,804 on the high side and \$442,106 on the low side. I previously noted that the total amount of commission generated by the 81

Exhibit 243, Gibbons' Expert Report at 36.

56	<p>Dr. Gibbons' findings regarding excessive commissions are consistent with the findings of Steven McGinnis, who recommended that UASNM self-report to the SEC based on the charging of excessive commissions.</p>
	<p>Q [Bliss] Did the range of markups/markdowns indicated in that Exhibit 5 result in any way in your recommendation to self-report to the SEC?</p> <p>A [McGinnis] Yes.</p> <p>Q And for what reason?</p> <p>A I looked at this. It looked like the clients were being charged exorbitant prices and that they needed to – and in light of what I read on the firm's ADV and no indication in any of the documentation that this – these types of charges were going to be placed against the client accounts, I felt the firm had no choice but to go to the SEC.</p> <p>Malouf Trial Tr. 11/18/2014 at 415:17-416:3.</p>
57	<p>Mr. McGinnis testified that in his 44 years in the securities industry, he has “never seen a million dollars conflict of interest like this before.”</p>
	<p>Q [Bliss] What was the basis of those recommendations? Is it the same that you talked about today?</p> <p>A [McGinnis] The same. Yes. 44 years in the industry and having worked with a lot of firms. My job through most of my career has been going into troubled firms and turning them around. You tend to see the same things over and over again. When a firm is troubled, it's because someone usually got greedy. That's what happened here. This is, you know, the beginning of the end of every firm.</p> <p>Q As far as the conflict of interest that you've talked about that Mr. Malouf's conduct created, how would you characterize that conflict of interest?</p> <p>A My opinion would be, fraud.</p> <p>Q How does it compare to other conflicts of interest you've seen throughout your career?</p> <p>A Of this type, the greatest one -- first off, I've heard of like major frauds, but as far as actually participating or in the review or looked at or had a firm I was hired to consult with -- would be in the five figures. Largest fraud I ever dealt with was probably in the mid eight figures, when I was with the SEC. But I've never seen a million dollars conflict of interest like this before.</p>

Malouf Trial Tr. 11/18/2014 at 421:24-422:22.

58

Dr. Gibbons has also opined that Malouf engaged in several repetitive short term bond trades that lost money for his clients. This non-standard industry practice is further evidence of Malouf's scheme to put his interests ahead of his clients and the conflict of interest that led him to execute bond trades through RJFS even where this may not have been in the best interests of UASNM clients.

5. Much of the bond trading by Malouf was detrimental to the client. It appears that much of all Treasury and Federal Agency trades that were executed during the study period were of repetitive, short term trades with trading patterns inconsistent with normal bond ownership.

Exhibit 243 at 4.

59

The evidence showed many bond trades of \$1 million or more that charged commissions in excess of the 0.5 percent Malouf testified was reasonable for trades of that size.

A commission of approximately 1% was paid to the Raymond James branch on the \$3 million federal agency loan reflected in Exhibit 339. FOF # 321.

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 # 322. (Malouf was involved with this trade, *See Proposed Finding of Fact #51, above*).

Trade Date	Account Number	Trade Directed by:	Transaction Type	CUSIP	Transaction Price	Net Price	Quantity	Gross Commission	Commission %
3/10/2008	48811671	?	Sell	745190K64	90.586	(\$13,588.200)	(15,000)	\$137.40	1.001%
3/10/2008	48811671	?	Sell	745190J90	107.739	(\$37,708.650)	(35,000)	\$381.15	1.001%
3/11/2008	48811671	?	Sell	400653FJ5	97.544	(\$24,398.000)	(25,000)	\$248.50	1.001%
3/11/2008	48811671	?	Sell	168780BE8	93.416	(\$48,708.000)	(50,000)	\$472.00	1.000%
3/11/2008	48811671	?	Sell	400653BG5	92.070	(\$23,017.500)	(25,000)	\$232.50	1.000%
4/3/2008	48811671	?	Buy	3133X5F43	103.548	\$2,992,199.450	2,880,000	\$28,000.00	0.975%
4/29/2008	48811671	?	Sell	912827BJ6	106.819	(\$18,159.150)	(17,000)	\$91.25	0.500%
4/29/2008	48811671	?	Sell	9128274F6	100.000	(\$9,000.000)	(9,000)	\$0.00	0.000%
5/22/2008	48811671	?	Buy	31331YYZ7	100.100	\$2,002,000.000	2,000,000	\$19,862.50	1.002%
5/22/2008	48811671	?	Buy	880591DT6	115.128	\$1,151,280.000	1,000,000	\$11,407.20	1.001%
5/22/2008	48811671	?	Buy	3137EAAZ2	104.467	\$2,089,340.800	2,000,000	\$20,680.80	1.000%
7/2/2008	48811671	?	Buy	3134A4JM4	102.317	\$767,376.000	750,000	\$7,606.00	1.001%
8/14/2008	48811671	?	Sell	3134A4JM4	100.248	(\$751,862.930)	(750,000)	\$7,594.58	1.000%
8/14/2008	48811671	?	Sell	3137EAAZ2	101.210	(\$2,000,865.960)	(1,975,000)	\$20,210.77	1.000%
11/17/2008	48811671	?	Sell	31331YYZ7	98.281	(\$49,140.500)	(50,000)	\$0.00	0.000%
11/21/2008	48811671	?	Buy	38778DAR2	93.387	\$188,774.000	200,000	\$2,500.00	1.357%
11/21/2008	48811671	?	Buy	3133XML66	105.420	\$1,560,216.000	1,480,000	\$14,800.00	0.958%
3/19/2009	48811671	?	Buy	912828JE1	101.450	\$991,673.750	1,000,000	\$10,752.50	1.096%
3/19/2009	48811671	?	Buy	013518U94	112.935	\$564,675.000	500,000	\$5,000.00	0.893%
4/15/2009	48811671	?	Sell	3133X5H43	104.259	(\$52,129.370)	(50,000)	\$125.00	0.239%
4/15/2009	48811671	?	Sell	3133XML66	106.413	(\$27,103.250)	(25,000)	\$62.50	0.230%
5/19/2009	48811671	?	Sell	7451458B1	98.500	(\$9,850.000)	(10,000)	\$50.00	0.505%
5/19/2009	48811671	?	Sell	647370BV6	108.358	(\$21,671.200)	(20,000)	\$109.00	0.500%
5/19/2009	48811671	?	Sell	647370BW4	108.358	(\$21,671.200)	(20,000)	\$109.00	0.500%
5/22/2009	48811671	?	Sell	3133XML66	107.450	(\$1,455,947.500)	(1,355,000)	\$13,550.00	0.922%
5/22/2009	48811671	?	Sell	3133X5H43	105.172	(\$2,923,795.360)	(2,780,000)	\$14,892.44	0.500%
5/22/2009	48811671	?	Sell	880591DT6	112.650	(\$1,126,529.050)	(1,000,000)	\$5,660.95	0.500%
7/1/2009	48811671	?	Buy	31331YHM5	106.783	\$4,270,520.000	4,000,000	\$42,281.76	1.000%
7/27/2009	48811671	?	Sell	31331YHM5	102.224	(\$25,556.110)	(25,000)	\$258.14	1.000%
7/30/2009	48811671	?	Sell	013518U94	109.713	(\$27,428.250)	(25,000)	\$277.25	1.001%
7/30/2009	48811671	?	Sell	31331YHM5	102.599	(\$25,649.770)	(25,000)	\$259.09	1.000%
8/7/2009	48811671	?	Buy	3133XU6P3	99.267	\$1,141,570.500	1,150,000	\$16,870.50	1.500%
8/17/2009	48811671	?	Sell	3133XU6P3	99.055	(\$24,763.750)	(25,000)	\$0.00	0.000%
8/25/2009	48811671	?	Buy	912828GH7	110.434	\$4,417,360.000	4,000,000	\$48,000.00	1.099%

Trade Date	Account Number	Trade Directed by:	Transaction Type	CUSIP	Transaction Price	Net Price	Quantity	Gross Commission	Commission
8/25/2009	46811671	?	Sell	31331YHM5	103.777	(\$4,099,181.630)	(3,950,000)	\$41,405.88	1.000%
9/3/2009	46811671	?	Sell	912828GH7	110.014	(\$55,007.000)	(50,000)	\$0.50	0.001%
10/2/2009	46811671	?	Buy	3133X72S2	113.055	\$565,275.000	500,000	\$8,000.00	1.436%
11/10/2009	46811671	?	Buy	3137EABP3	110.125	\$2,202,500.000	2,000,000	\$32,000.00	1.474%
12/4/2009	46811671	?	Buy	912828GX2	112.588	\$596,702.210	500,000	\$6,513.94	1.123%
12/4/2009	46811671	?	Buy	912828CP3	108.015	\$928,354.510	750,000	\$9,191.83	1.000%
12/4/2009	46811671	?	Buy	912828ET3	107.800	\$879,914.810	750,000	\$8,407.35	0.965%
1/13/2010	46811671	?	Sell	912828GX2	109.498	(\$26,561.180)	(25,000)	\$260.84	0.505%
1/13/2010	46811671	?	Sell	912828JE1	100.263	(\$25,135.690)	(25,000)	\$125.35	0.496%
1/13/2010	46811671	?	Sell	912828GH7	108.025	(\$27,006.250)	(25,000)	\$125.00	0.461%
1/20/2010	46811671	?	Sell	013518U94	110.383	(\$27,595.750)	(25,000)	\$250.00	0.898%
2/12/2010	46811671	?	Sell	3137EABP3	107.072	(\$175,668.800)	(165,000)	\$925.00	0.465%
3/8/2010	46811671	?	Sell	3133XU6P3	99.350	(\$1,117,687.500)	(1,125,000)	\$11,250.00	0.997%
3/8/2010	46811671	?	Sell	3133X72S2	109.125	(\$540,625.000)	(500,000)	\$5,000.00	0.916%
3/11/2010	46811671	?	Buy	31359MRG0	106.850	\$544,250.000	500,000	\$4,500.00	0.834%
3/22/2010	46811671	?	Sell	912828GH7	109.050	(\$61,787.500)	(75,000)	\$662.50	0.683%
4/16/2010	46811671	?	Sell	912828JE1	100.355	(\$963,366.380)	(975,000)	\$9,932.99	1.000%
4/23/2010	46811671	?	Buy	31396AJ94	100.735	\$780,694.460	775,000	\$7,729.65	1.000%
5/21/2010	46811671	?	Buy	31396AUJ9	105.220	\$263,050.000	250,000	\$2,575.00	0.989%
6/1/2010	46811671	?	Buy	31396AVD1	104.310	\$599,760.550	575,000	\$5,937.80	1.000%
7/2/2010	46811671	?	Buy	3133XWE70	104.117	\$416,469.250	400,000	\$4,123.46	1.000%
7/22/2010	46811671	?	Buy	3133XVNU1	105.649	\$1,479,086.420	1,400,000	\$14,844.42	1.000%
7/22/2010	46811671	?	Sell	912828CP3	105.118	(\$13,390.710)	(111,000)	\$135.15	1.000%
9/3/2010	46811671	?	Buy	31359MZC0	113.826	\$341,478.590	300,000	\$3,360.94	1.000%
9/17/2010	46811671	?	Buy	3133712M7	100.931	\$3,835,365.140	3,800,000	\$19,000.00	0.498%
9/17/2010	46811671	?	Sell	912828GH7	115.500	(\$4,399,000.000)	(3,800,000)	\$19,000.00	0.431%
10/22/2010	46811671	?	Sell	38122NAP7	109.499	(\$16,424.850)	(15,000)	\$82.65	0.501%
11/16/2010	46811671	?	Sell	3137EABP3	114.400	(\$2,099,240.000)	(1,835,000)	\$18,350.00	0.867%
11/18/2010	46811671	?	Buy	313371PC4	99.023	\$990,227.980	1,000,000	\$5,000.00	0.507%
11/18/2010	46811671	?	Buy	3136FPXM4	99.750	\$997,500.000	1,000,000	\$5,000.00	0.504%
12/23/2010	46811671	?	Buy	452150T86	109.489	\$301,994.750	275,000	\$2,261.00	1.000%
12/28/2010	46811671	?	Sell	013518U94	106.441	(\$487,984.500)	(450,000)	\$2,452.50	0.500%
1/7/2011	46811671	?	Buy	313371W51	99.345	\$298,034.890	300,000	\$2,950.84	1.000%
1/18/2011	46811671	?	Sell	3133712M7	97.912	(\$24,478.020)	(25,000)	\$247.23	1.000%
1/20/2011	46811671	?	Buy	3133XWKV0	104.162	\$599,043.770	575,000	\$5,750.00	0.969%

Exhibit 582 - Denigris Amended Expert Report, Tab 1, pages 1-2.

C. Malouf acted with scienter

1. The Purported Purchase of Practice Agreement

60	<p>Malouf's claim that he and Lamonde signed a written Purchase of Practice Agreement in late December 2007 or early January 2008 is not credible.</p>
	<p><i>See Proposed Findings of Fact ##61-73, below.</i></p> <p>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 #223.</p> <p>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 #224.</p> <p>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:</p>

“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 #225.

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 #227.

Malouf testified that payment for the branch was to be 40% of branch revenue over a 4 year production period. FOF #166.

The PPA stated that the production period was to be five years, from January 2, 2008 to 12-31, 2012. FOF #167.

Malouf is not sure why if everything is based on four years, the contract contemplates five. FOF #168.

61

The Purchase of Practice agreement that was first produced in June of 2010 was notarized on June 11, 2010.

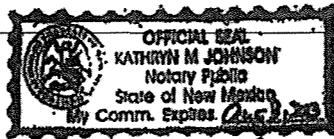
24. Each of the parties hereto shall execute such documents and take such actions as may be reasonably requested by the other party to carry out the provisions and purposes of this Agreement.

~~IN WITNESS WHEREOF~~ the parties hereto hereby execute this Agreement as set forth below this:

11th day of June, 2010.

(Seller signs)
Typed name, Seller
DENNIS MALOUF

(Buyer signs)
Typed name, Buyer
MARJORIE LAMONDE



Kathryn M. Johnson

Exhibit 97 at RJFS-SEC-UASNM-000166.

62	<p>The contract, bearing a June 11, 2010 notary signature, was attached to an e-mail dated the day before, June 10, 2010.</p>
	<p><u>Bobbie Hartzell</u></p> <hr/> <p>From: Eileen O'Donnell <[REDACTED]> Sent: Thursday, June 10, 2010 2:43 PM To: Kirk Bell - RJFS National Sales Cc: Maurice Lamonde Subject: 4GE Purchase agreement Attachments: Purchase of Practice Agreement.pdf</p> <p>Mr. Bell-</p> <p>Attached please find the purchase agreement for 4GE.</p> <p>Thank you,</p> <p>Exhibit 97 at RJFS-SEC-UASNM-000160.</p>
63	<p>No witness other than Malouf claimed to have seen a written Purchase of Practice Agreement prior to January of 2010.</p>
	<p>Prior to 2010, Hudson, Kopczynski, and Keller had not seen a written PPA regarding Malouf's sale of his RJ branch to Lamonde. FOF #126.</p> <p>Mr. Miller [Mr. Malouf's accountant] first saw a copy of the written Purchase of Practice Agreement in May of 2011. FOF #325.</p> <p>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 #227.</p> <p>Q [McKenna] And was it Mr. Malouf that told you he sold his Raymond James branch?</p> <p>A [Ciambor] Yes, I believe, during the 2008 on-site review.</p> <p>Q And that would have been May or June of 2008?</p> <p>A Correct.</p>

	<p>Q And did he tell you who he sold the branch to?</p> <p>A Mr. Lamonde.</p> <p>Q Did he provide you with a copy of the sales agreement?</p> <p>A No, he did not.</p> <p>Malouf Trial Tr. 11/19/2014 at 736:9-20.</p> <p>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 #150.</p>
64	<p>Lamonde changed his testimony about entering into a written agreement with Malouf in late 2007 or early 2008 after being confronted with e-mails indicating that there was no written agreement until 2010 and acknowledged that he and Malouf did not create a written, signed agreement until June of 2010.</p>
	<p>Q Mr. Lamonde, is there anything that you wish to clarify or add anything to the statements that you have made earlier today?</p> <p>A Well, I'm hoping the clarifications we did at the end of the day clarified the stuff I said at the beginning of the day.</p> <p>Q Okay. Anything in particular that you want to make sure is clarified?</p> <p>A The signed document not being there until June. The verbal contract.</p> <p>Q So the two big changes during today were your change in testimony that you did not have a signed agreement right away, correct?</p> <p>A Correct.</p> <p>Q And the second being that you actually had an oral agreement with two components. One component being the 40 percent eventually, but initially the payments were going to be determined based on the commissions that were being earned by Raymond James through UASNM bond trading?</p> <p>A Correct.</p> <p>Q Anything else?</p> <p>A Not that I can think of.</p> <p>Exhibit 239 – Lamonde Tr. at 285:5-286:2.</p>

65	<p>Malouf has been unable to produce any copy of Exhibit A to the Purchase of Practice Agreement, which purportedly set forth the clients Malouf was transferring to Lamonde.</p>
	<p>The Purchase of Practice Agreement Provides:</p> <p>1. Seller assigns to Buyer the sole and exclusive right to provide investment advice and services, including the sale of securities and insurance products, to all of Seller's client accounts. Attached as Exhibit A is a list of such accounts, which hereinafter will be referred to as "the assigned accounts." Seller represents Exhibit A contains the names of all of his/her existing clients. Seller warrants that no</p> <p>Exhibit 97 at RJFS-SEC-UASNM-000161.</p> <p>Q. [McKenna] Now, again, I'm going to give you my understanding, and correct me if I'm wrong, but your contention is that when you signed this agreement there was an Exhibit A to the agreement that listed the client accounts you were actually transferring to Mr. Lamonde; is that right?</p> <p>A. [Malouf] Yes.</p> <p>Q. And would you – would you acknowledge that, in connection with the SEC investigation as well as the UAS litigation, you have not been able to locate a copy of that Exhibit A?</p> <p>A. Correct.</p> <p>Malouf Trial Tr. 11/20/2014 at 921:25-922:11.</p> <p>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 #128.</p>
66	<p>Lamonde did not make payments to Malouf on a monthly basis as provided for in the Purchase of Practice Agreement.</p>
	<p>8. a. The payments to be made from Buyer to Seller referred to herein shall be made by Buyer to Seller monthly, on account of each month's commissions and securities related fees received by Buyer. Such payments shall be received by Seller by the fifteenth (15th) day of each month.</p> <p>Exhibit 97 at RJFS-SEC-UASNM-000162.</p> <p>In performing Malouf's personal bookkeeping, Ms. Calhoun received checks for deposit approximately twice a month from Maurice Lamonde. FOF #258.</p>

The number of checks Malouf received from Lamonde between January 2008 and May 11, 2011 varied from between zero to four a month. FOF #323.

See also Exhibit 201.

67 Between January 2008 and April 2011, Lamond paid Malouf approximately 73 % of the total RJ branch revenue.

MALOUF INCOME ANALYSIS

Year	Lamonde's 1099 from RJ	Malouf's 1099 from Lamonde and Malouf's Draft Tax Returns	Malouf's % of Lamonde's Total RJ Earnings
2008	\$661,165	\$496,607	75%
2009	\$504,677	\$399,248	79%
2010	\$437,383	\$278,193 *	64%
Total	\$1,603,225	\$1,174,048	73%

Exhibit 208.

68 Lamonde admitted in testimony that he and Malouf did not follow the terms of the PPA and that he paid Malouf more than the terms of the PPA required.

Q The topic that I wanted to start to get into was transitioning to understand the payments that you were making to Mr. Malouf pursuant to the agreement and trying to understand those payments that were made. When did you start making payments to Mr. Malouf per the agreement or understanding that you had?

A More than likely in January of 2008

Q And how, at that point in time, did you

decide how much to pay Mr. Malouf? How did you actually figure it out?

A It was a portion of the commissions that we got each month.

Q Portion of the overall branch commissions?

A Correct.

Q And was it supposed to be 40 percent?

A It was supposed to be 40 percent, but I paid him more, I believe.

Q And you touched on that earlier today that you had this agreement with him. I'm assuming this is oral or oral understanding that you would prepay or could prepay --

A Yes.

Q -- is that correct?

A And your testimony from earlier today was that you thought you had that understanding with Mr. Malouf at the time that you reached the agreement with him, correct?

A Correct.

Q And since your testimony now is that that was an oral agreement, this would just be a portion of that oral agreement, correct?

A Correct.

Exhibit 239 -- Lamonde Tr. at 178:17-179:25.

69

Lamonde also testified that Malouf repeatedly demanded immediate cash payments for the entire commission that had been earned from particular UASNM bond trades (which was contrary to the terms of the agreement that provided for monthly payments).

Q And you testified that at times Mr. Malouf expected or wanted or demanded to be paid right away, rather than waiting a week or two for his money, correct?

A Correct.

Q And I think you testified that he expected to be paid, you know, all or mostly all of the amount that his trades had generated, correct?

A Correct.

Q And that's what I wanted to follow up on, that particular point. In response to him making that demand of you, did you ever come back to him and say, no, that's not what is required under the

agreement? I only have to give you 40 percent, so at most I'm going to give you 40 percent in advance.

A No.

Q And why not?

A It was brought to me that this is the way we were going to do this particular trade. I mean the buy/sell agreement. And the difference between what I was going to pay him over a long period of time would be paid over a shorter period of time.

Q When you say it was "brought" to you, that makes it seem like Mr. Malouf initiated it.

A Yes.

Q He initiated it?

A Correct.

Exhibit 239 – Lamonde Tr. at 274:22-275:15.

70

Lamonde was forced to seek at least 13 cash advances from RJFS to pay Malouf.

Lamonde paid Malouf using payroll advances at times. FOF #214.

Payroll Advances

DATE	Branch	Div	Region	BRANCH MANAGER	AMOUNT	For FBO If not Manager	# of Advances	Chg Amt or Error
12/17/2008	4GE	SD	5	Maurice Lamonde	\$ 18,100.00		1	\$0.00
1/20/2009	4GE	SD	5	Maurice Lamonde	\$11,600.00	Peter Lehrman	1	
1/20/2009	4GE	SD	5	Maurice Lamonde	\$1,690.00		2	\$50.00
4/16/2009	4GE	SD	5	Maurice Lamonde	\$13,600.00	Peter Lehrman	2	\$50.00
4/16/2009	4GE	SD	5	Maurice Lamonde	\$3,880.00		3	\$150.00

Exhibit 101 (note that the number of advances FBO Lamonde totals 6).

Shane Coley

From: Gerri Kavouklis Price

Sent: Thursday, May 20, 2010 3:24 PM

To: Shane Coley

Subject: Payroll Advances - 4GE

11/11/2009	4GE		SD	5	Maurice Lamonde	\$19,600.00	
12/11/2009	4GE		SD	5	Maurice Lamonde	\$20,800.00	
1/14/2010	4GE		SD	5	Maurice Lamonde	\$23,250.00	
3/10/2010	4GE		SD	5	Maurice Lamonde	\$25,000.00	
4/19/2010	4GE	43Y7	SD	5	Maurice Lamonde	\$8,800.00	
4/19/2010	4GE	4G03	SD	5	Maurice Lamonde	\$2,900.00	
4/19/2010	4GE	5336	SD	5	Maurice Lamonde	\$120.00	Abi

Exhibit 102.

71

Malouf's claim that Lamonde was simply pre-paying what he owed for the branch defies logic given that Lamonde was borrowing against a life insurance policy, taking money from his father-in-law's bank account and running up new credit card debt without telling his wife. He was in no position to be voluntarily pre-paying tens of thousands of dollars to Malouf on a monthly basis.

Raymond James intercepted an e-mail between Lamonde as [sic] 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 #223.

From: barbara_lamonde@agilent.com [REDACTED]
Sent: Tuesday, April 28, 2009 10:39 AM
To: Maurice Lamonde
Subject: Situation

So here goes, since you are not going to apologize or even acknowledge this situation I'll put it in writing for you.

Not only have you not been up front about your business dealings but now you have lied to me on a personal note. I've worried constantly about your business dealings. Your ego is too big to admit defeat and I'm afraid we will end up bankrupt before this is over. I knew you were taking money from Dad's account not sure for what but I knew it was going to you somehow. Now I find we have credit cards with balances that I never knew we had and in addition to that I still have never seen in writing (although promised) the agreement between you and Dennis or the state of our accounts with Raymond James. We have worked very hard for what we have and I don't feel that you value that at all anymore, your reputation and your business has now become more important than your family, appearance has become everything to you. So what to do, yes I'm thinking about somehow separating our assets so that you don't take me down with you. What I have worked for is VERY important to me and I do hope to retire some day and I don't see it happening as you keep digging us deeper and deeper.

Exhibit 89.

	<p>Q Let's start first with the e-mail from her to you at the bottom of the first page dated April 28th, 2009. I wanted to ask you questions about a number of different things which she says in here. It says, "Not only have you not been up front about your business dealings, but now you</p> <hr/> <p style="text-align: right;">Page 128</p> <p>have lied to me on a personal note." Do you know what that is referring to. A Yes. Q What is it referring to? A That I borrowed money out of my life insurance. Q What money did you borrow out of your life insurance? A Approximately 9,000. Q When did you borrow that money? A Oh, earlier that year, I believe. Q So the e-mail -- A Or the end of that year. The end of 2008. Q You borrowed 9,000 out of your life insurance? A Right. Q Yes? A Yes. Q And when she says you lied to her, how did you lie to her? A Because I borrowed the money and didn't tell her.</p> <p>Exhibit 239 – Lamonde Tr. at 127:20-128:23.</p>	
72	<p>Lamonde's payments to Malouf were tied to the commissions earned on the UASNM bond trades Malouf made through Lamonde's Raymond James branch.</p>	
	<p>Q [McKenna] Okay. You said something about a timing relationship between the bonds. What did you mean by that?</p> <p>A [Hudson] Well, it seemed like after a bond transaction, I mean pretty much, pretty clear that there were, you know, Moe giving him checks, or Dennis asking for a check from Moe, you know, within close proximity to bond transactions.</p>	

Q So Mr. Malouf would make a bond trade through the Raymond James branch, and then subsequently, a day or two later, he would be asking for a check from Mr. Lamonde?

A Could be a day or two, could be a week. You know, I – I think Raymond James has a payroll cycle probably like we do at our company. But very much tied to that kind of a time frame. There would be trades and requests for money, seemed to be tied together. But again, I wasn't paying real strict attention to it.

Malouf Trial Tr. 11/17/2014 at 142:4-21.

On at least one occasion, Malouf requested that Lamonde get an advance from Raymond James. FOF #196.

Maurice Lamonde told Paula Calhoun that the checks Lamonde gave to Malouf were commission checks. Proposed Finding of Fact #73, below.

Comparison of Commissions Earned by Lamonde from Malouf's Trades with Payments Made by Lamonde to Malouf			
	Lamonde Commissions	Payments by Lamonde to Malouf	Difference (Branch Commission - Amount Paid by Lamonde)
Total for First Quarter 2008	\$91,349.53	\$95,760.05	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$125,065.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.05	\$120,171.48	(37,453.43)
Total for Fourth Quarter 2008	\$85,062.95	\$108,100.00	(23,037.05)
Total for Year 2008	\$382,779.82	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.32	(14,084.39)
Total for Third Quarter 2009	\$125,761.94	\$146,640.48	(20,878.54)
Total for Fourth Quarter 2009	\$150,729.84	\$113,051.00	37,678.84
Total for Year 2009	\$352,034.89	\$366,210.25	(14,175.36)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$22,607.00	10,355.32
Total for Third Quarter 2010	\$66,813.50	\$29,786.00	37,027.50
Total for Fourth Quarter 2010	\$71,598.89	\$64,168.50	7,430.39
Total for Year 2010	\$301,426.84	\$237,742.79	63,684.05
Total for First Quarter 2011	\$37,660.27	\$14,482.00	23,178.27
Total for Second Quarter 2011	\$552.56	\$552.56	0.00
Total for Year 2011	\$38,212.83	\$15,034.56	23,178.27
TOTAL	\$1,074,454.38	\$1,068,084.13	6,370.25

Sources for Trial Exhibit 203 - Payments-Commissions Comparison:

Binder 1 - Maurice Lamonde's 2008 - 2011 Wells Fargo bank statements (contained in Testimony Exhibits 104, 105, 106, & 107)

Binder 3 - Selected Raymond James Payroll Statements for 2008 - 2011 relating to Maurice Lamonde.

Trial Exhibit 201 - Payments by Lamonde to Malouf

Exhibit 203.

73	Maurice Lamonde told Paula Calhoun that the checks Lamonde gave to Malouf were commission checks.
	<p>Q [McKenna] And what was your understanding of what those checks related to?</p> <p>A [Calhoun] I was told they were commissions from Raymond James.</p> <p>Q Who told you that?</p> <p>A Well, when I first started there, Dennis told me that his big clients were Raymond James's clients, and then Maurice told me 'hat those were commission checks from Raymond James.</p> <p>Q And were the checks -- Well, let's just look at Exhibit 1-- for a minute, if we could, please. And I want to go to page 25 of that PDF. If you could blow up the top two checks, please. Ms. Calhoun, do these checks look familiar to you, I guess I should say?</p> <p>A Yes, they do.</p> <p>Q What do they reflect, in your opinion?</p> <p>A Commission checks Maurice Lamonde LTD would give to Dennis.</p> <p>Malouf Trial Tr. 11/21/2014 at 1243:13-1244:7.</p> <p>Q [McKenna] Did you ever have any discussions with Maurice Lamonde about these checks?</p> <p>A [Calhoun] Yes, I asked him one time what they were for.</p> <p>Q And what did he say?</p> <p>A He said that they were commission checks.</p> <p>Malouf Trial Tr. 11/21/2014 at 1244:22-1245:1.</p>
74	Malouf's position that his arrangement with Lamonde was fully disclosed is not credible.
	<i>See Proposed Findings of Fact ##26, 79-88.</i>

75	Malouf knew that his arrangement with Lamonde was a conflict of interest, and he failed to disclose that conflict to his clients at UASNM.
	Proposed Findings of Fact ##25-26.
76	Malouf's expert witness, Alan Wolper, recognizes that SEC No-Action Letters provide guidance on the interpretation of FINRA rules and are relied upon in the securities industry.
77	<p>Q [Bliss] Would you agree that SEC non-action letters provide guidance to the interpretation of FINRA rules?</p> <p>A [Wolper] Yes.</p> <p>Q And would you agree that they are relied on in the industry?</p> <p>A Sure.</p> <p>Malouf Trial Tr. 11/21/2014 at 1498:7-12.</p>
78	Malouf contends, on the one hand, that his payments from Lamonde were allowable under FINRA's IM 2420-2 Continuing Commission policy, <i>i.e.</i> they were "commissions," but on the other he contends that the payments were not commissions.

H. NASD Rule 2420

Relevant to the claim under § 15(a)(1) is NASD Rule 2420 and Interpretive Memorandum 2420-2. Rule 2420 addresses dealings between FINRA member firms (such as RJFS) and non-members (such as Malouf, who voluntarily relinquished his FINRA registration upon sale of the RJFS branch, effective December 31, 2007). IM 2420-2 addresses FINRA policies (applicable only to its member firms and their associated persons) regarding continuing commissions. It provides that “the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association. However, payment of compensation to Rules, provided bona fide contracts call for such payment.” See Exh. I. IM 2420-2 sets forth the procedure by which FINRA member firms may pay continuing commissions to non-members.

Malouf’s Pre-Hearing Brief at 17-18.

D. Exchange Act Sections 15(a)(1) and 15C(a)(1)(A)

Malouf did not receive commissions or engage in any other conduct that would classify him as a “broker” for purposes of Section 15(a)(1) and 15C(a)(1)(A). Payments Malouf received from LaMonde were a portion of revenues earned by Branch 4GE paid as consideration for the purchase of the branch pursuant to the PPA.

Id. at 22.

2. Malouf kept secret his receipt of transaction based compensation

79	Prior to 2010, <i>i.e.</i> for at least two years, Malouf did not tell his employees at UASNM that he was receiving payments from Lamonde based on commissions earned on trades he made through Lamonde’s Raymond James branch.
	In 2008 Kopczyński 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 #34.

Q [McKenna] Were you aware that Mr. Lamonde was paying Mr. Malouf for the branch over time?

A [Keller] I wasn't aware of that in 2008 and 2009. But in the early part of 2010, I did become aware of it, because Mr. Malouf and I had some contentious conversations regarding it.

Malouf Trial Tr. 11/20/2014 at 1172:19-24.

Q [McKenna] In 2008, did you suspect that these payments that Mr. Malouf was receiving from Mr. Lamonde might have related to commissions earned through the Raymond James branch, based on Mr. Malouf's trades?

A [Hudson] I don't know about in 2008. Between 2008 and 2011, by the time 2011 came around, I was pretty sure it was very timing oriented, relating to the bonds, and in 2008 I just knew that monies -- what I overheard, monies passing between the two.

During that period of time, somewhere in there, I came to believe that, you know quite frankly, they had some kind of agreement, you know, related to like an earnout, you know, an earnout being where you got some share of the profit of the firm. I'd been involved in other businesses where there were sales with earnouts and I thought it seemed like an earnout to me.

Malouf Trial Tr. 11/17/2014 at 141:12-142:3.

Q. [King] When did you first become aware that Mr. Lamonde was actually making payments to Mr. Malouf?

A. [Kopczynski] Perhaps in 2010, late.

Malouf Trial Tr. 11/21/2014 at 1332:24-1333:1.

Q. [McKenna] Okay. What did Mr. Malouf specifically tell you, if anything, about his association with Raymond James?

A. [Kopczynski] That it was over with.

Q. And when did he tell you that?

A. When I inquired whether he actually sold the branch.

Q. And when was that?

	<p>A. Early 2008.</p> <p>Malouf Trial Tr. 11/21/2014 at 1376:4-12.</p> <p>Proposed Finding of Fact #80, below.</p>
80	<p>Malouf told UASNM's bookkeeper, Paula Calhoun, over and over not to tell others at UASNM about the work she was doing for him; which included depositing commission checks from Lamonde.</p>
	<p>Q. [McKenna] Did Mr. Malouf give you any direction about talking to others at UASNM about this bookkeeping that you were doing for the side companies or for him personally?</p> <p>A. [Calhoun] He told me I could never say anything to anybody at work about what I did for him, over and over.</p> <p>Q. Over and over, he told you that?</p> <p>A. Yes.</p> <p>Malouf Trial Tr. 11/21/2014 at 1240:4-12.</p>
81	<p>Malouf told UASNM's bookkeeper, Paula Calhoun, that he would fire her if she told others at UASNM about the work she was doing for him; which included depositing commission checks from Lamonde.</p>
	<p>Q [McKenna] Did he tell you what would happen if you did?</p> <p>A [Calhoun] He was the president. He would fire me.</p> <p>Malouf Trial Tr. 11/21/2014 at 1240:13-14.</p>
82	<p>Malouf told UASNM's independent compliance consultant, Michael Ciambor, that with the sale of his Raymond James branch to Lamonde his relationship with Raymond James was effectively severed.</p>
	<p>Q [McKenna] And was it Mr. Malouf that told you he sold his Raymond James branch?</p> <p>A [Ciambor] Yes, I believe, during the 2008 on-site review.</p> <p>Q And that would have been May or June of 2008?</p> <p>A Correct.</p>

Q And did he tell you who he sold the branch to?

A Mr. Lamonde.

Q Did he provide you with a copy of the sales agreement?

A No, he did not.

Q Did you ask for it?

A No, I did not.

Q Why not?

A Based on our conversations with Mr. Malouf, he indicated that, you know, essentially, his relationship from that point forward with Raymond James had been effectively severed. I took him at his word. I viewed that transaction as a sale of a personal asset that wouldn't necessarily come underneath any of the rules and regulations to be reported or reviewed under the Advisers Act.

Malouf Trial Tr. 11/19/2014 at 736:9-737:6.

Q [King] And at the time you first learned that the branch had been sold -- I believe your testimony was that Mr. Malouf told you that he severed ties. I think is the word that you used.

A [Ciambor] Correct.

Q Okay. Are those the words he used?

A I can't recall specifically.

Q Okay.

A But he indicated that he sold the branch office, and we confirmed that he was no longer licensed through our BrokerCheck review.

Malouf Trial Tr. 11/19/2014 at 773:18-774:3.

Q [King] Now, why is it in 2009, when you're already under the impression that he had sold the branch and had a one-time payment and had severed all ties -- why did you ask him again?

	<p>A [Ciambor] Because that's a tactic that examiners use during their reviews, where essentially they will ask the same question to multiple employees to identify inconsistencies. Given that we're on site with our clients year over year, that's also a tactic that we employ to make sure that we believe we have gotten correct information from our clients from the interviews in previous years.</p> <p>Malouf Trial Tr. 11/19/2014 at 775:21-776:7.</p>
83	<p>Prior to June 2010, Malouf did not tell Ciambor that he was receiving payments from Lamonde based on commissions earned on trades he made through Lamonde's Raymond James branch.</p>
	<p>Q [McKenna] Now, in 2008, when you learned that Mr. Malouf had sold his Raymond James branch to Mr. Lamonde, did you have any understanding of whether he was to receive ongoing payments from Mr. Lamonde in consideration for the sale of that branch?</p> <p>A [Ciambor] No.</p> <p>Malouf Trial Tr. 11/19/2014 at 737:20-25.</p> <p>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 40 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 #156.</p>
84	<p>Ciambor testified that based upon what he knows now he thinks Malouf lied to him.</p>
	<p>Q [McKenna] Based upon what you know now – I mean, bottom line, do you think Mr. Malouf lied to you about his agreement with Lamonde.</p> <p>A [Ciambor] Yes, I do.</p> <p>Malouf Trial Tr. 11/19/2014 at 852:21-25.</p>
85	<p>UASNM did not disclose Malouf's continued involvement with the Raymond James branch in its Forms ADV or on its website.</p>
	<p><i>See Proposed Findings of Fact ##96-101, 105-106, below.</i></p>
86	<p>A September 17, 2010 e-mail exchange between Kirk Bell and Eva Skibicki at RJFS reflects that a 1 point commission on a \$3.8 million bond trade was reduced to half a point per a discussion between Bell and Skibicki.</p>

Bobbie Hartzell

From: Kirk Bell - RJFS National Sales <[REDACTED]>
Sent: Friday, September 17, 2010 2:57 PM
To: Eva Skibicki
Cc: Maria Shepherd
Subject: RE: I need you to call me , please

Importance: High

I spoke to Moe on this trade.

Take it down to a ½ per our discussion.

Moe also mentioned that he thought that \$3.8 went through at less than a point.

I am jumping to a meeting.

Exhibit 65.

See Proposed Finding of Fact 87, below.

87

Hudson became concerned about Malouf's receipt of payments in the fall of 2010 when he learned that Malouf had questioned RJFS' decision to write down the commission charged on a particular bond trade.

Q [McKenna] So you've mentioned several things that raised concerns with you about this arrangement: the fact that Mr. Malouf was asking Mr. Lamond for checks, the rent situation, your growing awareness that this was an earnout type of situation, the proximity of the request for checks to the bond trades. Anything else that caused concern, in your mind about this arrangement?

A [Hudson] Well, I think you know, towards the end, towards the end of his employment with UAS, there was a time when you know, I had come back from a business trip and there was a pretty strong vehement disagreement amongst my other partners about an investment committee meeting where people had decided to -- well, Mr. Malouf thought they had agreed to sell 10 percent of the client portfolios out of equity and buy fixed income. And Mr. Lehrman and Mr. Keller disagreed.

And furthermore, Mr. Malouf thought it was 10 percent out of equities regardless of whether they were in compliance with their investment policy or not. So if a client was already 10 percent below where they should have been, was going to go another 10 percent below.

Mr. Keller and Mr. Lehrman thought it was a reduction of the asset allocation related to equities by 10 percent and then an evaluation client by client.

And so, it was -- that was probably one of the first times where it seemed like a

fairly reckless way of approaching the investment management. The bond purchases and other things like that, I've never during the, you know, up until that point had any question about are these appropriate actions or are these good quality bonds and things like that for the account. For the most part, they were with a couple of exceptions, that I'm aware of. But -- but, that was an action that seemed designed just to create more bond purchases.

That was probably, you know, from my standpoint, you know, I talked about kind of the increasing concern about this conflict of interest. There was in September of 2010, the time when I had overheard a bond purchase had been DK'd, meaning Raymond James had stopped it from happening. It had already been purchased, already been ready for delivery, and they stopped it because they -- they, "they" are the seller, they wanted to reduce the commission.

Q. Raymond James wanted to reduce the commission?

A. Raymond James wanted to reduce -- the seller wanted to reduce the commission that was charged on a \$3 million bond trade to UAS. And that struck me as really -- I had overheard Moe and Dennis talking about it, and that struck me as very strange, that the seller was going to be reducing their profit, or their commission on our part. Seemed like that should be our job, you know.

Q. Do you know what the commission was that was paid on this \$3 million bond trade?

A. It was originally 1 percent, and was reduced to 50 basis points.

Q. Who reduced to --

A. Raymond James. I assume their corporate office or their compliance counsel.

Q. Did you overhear any reaction by Mr. Malouf to this reduction in commission?

A. I think he was just puzzled by it. I overheard a conversation with them passing. I believe I mentioned it to Ms. Villa at the time, but just -- just to confirm that it was true. And she told me yes that's true.

Q. Did you have an understanding of why Mr. Malouf would be questioning this reduction in the commission?

A. Well, it seemed strange to me. I mean, I think that that would be what's related to Moe's income, but you know, could be because the -- the bond trade didn't go through. But I thought it was a little strange to be -- you know, that whole situation for

	<p>us, to be in a position where the seller is telling us that we were -- we were allowing too much to be made on a trade.</p> <p>Q Too much to be made by the seller?</p> <p>A By the seller.</p> <p>Q So in effect, what they did was they reduced the price you had to pay for the bond?</p> <p>A They reduced the price, yes, that we had been willing to pay.</p> <p>Q And who was -- who had made that bond trade; do you know?</p> <p>A Mr. Malouf.</p> <p>Trial Tr. 11/17/2014 at 145:14 – 149:5.</p>
88	Hudson thought it was odd that Malouf would be concerned about a commission write down because that money was going to Lamonde.
	<i>See Proposed Finding of Fact #87.</i>

3. Malouf is not a credible witness

89	<p>Malouf prior sworn statement that all bond trades were done after shopping the proposed transactions with other brokers such as Fidelity and Schwab was contradicted by his later sworn testimony.</p>
	<p>In the state litigation, Malouf signed an Affidavit that stated, in part:</p> <p>f. All bond trades involving Raymond James were done with full disclosure to others at UASNM and ACA Compliance Group, as evidenced by the disclosures in the Form ADV. All such trades were done after “shopping” the proposed transaction with other brokers (Fidelity and Schwab) so that, if the transaction would be done by Raymond James, it would be done in full compliance of the “best execution” rules.</p> <p>Exhibit 240 at 7, ¶ 21.f. UASNM0119355.</p> <p><i>See Proposed Finding of Fact #39.</i></p>

90	<p>Malouf's prior sworn statement that he did not use UASNM personnel for his personal benefit other than for some minor charitable or other work was false.</p>
	<p>In the state litigation, Malouf signed an Affidavit that stated, in part:</p> <p style="padding-left: 40px;">e. I have no knowledge any use of UASNM personnel for personal use other than some minor charitable and other work and the usual matters common to all businesses. It certainly has not been "significant" to my knowledge. Often I gave the person helping me a check from my personal funds to compensate them. This has been going on for years.</p> <p>Exhibit 240 at 7, ¶ 21.e. UASNM0119355.</p> <p>From 2008 through 2011, Ms. Calhoun spent approximately 30-40% of her time working on Malouf's personal bookkeeping. FOF #261.</p>
91	<p>Malouf initially testified that he shared the written Purchase of Practice Agreement with others in 2008, but then changed his testimony to say he notified everybody verbally about the terms of the sale.</p>
	<p>Q [McKenna] And do you believe that you ever sent the Purchase of Practice Agreement to Michael Ciambor at ACA?</p> <p>A [Malouf] I believe I presented it to him, yes.</p> <p>Q You believe you personally presented it to Mr. Ciambor?</p> <p>A Correct.</p> <p>Q When?</p> <p>A I can't be for sure, but it would have been probably in early -- middle of 2008. The audits came in April. I'm not -- I can't be a hundred percent certain.</p> <p>Q Of the timing or of whether in fact you did present it to Mr. Ciambor?</p> <p>A The date.</p> <p>Q So, your testimony is that you gave the PPA to Mr. Ciambor in 2008 at some point?</p>

A Correct. I -- let me clarify that. I know that -- had an intense and a very long conversation about it, and I'm -- I -- to say that I actually handed--it--him, I can't say that. I don't recall. But I would have assumed he would have wanted to see that contract, and I would have given it to him just as I did everybody that was involved.

Q Okay. Well, let me ask you this. Who did you give a copy of your written Purchase of Practice Agreement to in 2008?

A I'm not sure. Possibly Kirk Hudson, or -- I know that I had it in my office, you know, for review or if anyone would ask me. I can't be sure. That's a long time ago.

Q I understand. I understand. So you don't -- you can't be sure whether in fact you gave it to anybody in 2008?

A I notified everybody verbally. Possibly not with an actual contract, but I can't recall.

Malouf Trial Tr. 11/20/14 at 928:2-929:12.

92

Malouf's testimony at the hearing about his bond trading practices was at odds with his prior testimony.

Q [McKenna] Now, would you acknowledge that, in fact, during this time period, you should have gotten multiple bids from different brokers to seek best execution on these bond trades?

A [Malouf] Yes.

Q Would you also acknowledge that you did not do that?

A No.

Q You would not acknowledge that?

A I will not acknowledge that.

Q Do you recall testifying differently when you met with Mr. Mulhern and provided investigative testimony?

A I don't recall.

MR. McKENNA: Can we pull up his transcript, which is -- what's the exhibit number, 231?

MR. BRICKELL: Yes.

MR. McKENNA: And let's go to page 124. Starting at line 8 and we're going to go to line 19. I'm going to read. This is the question. "At what point in the process would you possibly get bids from other broker-dealers?" Your answer: "I would spot check." It wasn't a situation where I got three bids' like I should have done. Okay? I read best execution, and I looked at the information. I called Raymond James about best execution. They explained how they did it. And it satisfied everything that I thought was necessary to get best execution. There was no formal format. I did check from time to time, but there was nothing religiously set up to say here are three bids. Let's take this one." Did I read that correctly?

A Yes.

MR. McKENNA: You can take that down, Tim.

Q Mr. Malouf, would you acknowledge that you did not send out bids when you wanted to buy a bond for a UAS client, nor would you send out asks when you wanted to sell a bond?

A No.

Q You would not acknowledge that?

A I would not.

MR. McKENNA: Can we pull up his transcript at page 127, please. And let's go to lines 14 to 19.

Q And 'm just going to read from your transcript again. "Q. All right. But other than that process, what else did you do to spot check?" Your answer: "I mean, that's it. "I wish I could say I had the bid ask, but I just didn't. I didn't send it out for a bid or a quote, if that's where you're headed." Did I read 'hat correctly?

A You did.

Malouf Trial Tr. 11/20/2014 at 935:13-937:16.

93

Malouf was aware that UASNM's policy was to seek multiple bids for bond trades and he falsely told others that he followed that policy.

See Proposed Findings of Fact ##35, 37, 89.

94	Malouf was at least reckless in failing to seek best execution for his bond trades.
	<i>See Proposed Findings of Fact ##32 - 47.</i>
95	Malouf was aware that UASNM's Form ADVs disclosed that he had a Bachelor of Science degree from the University of Northern Colorado, when in fact he had no such degree.
	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 #335. Mr. Malouf did not receive a Bachelor of Science in Finance degree from the University of Northern Colorado. FOF #336.

D. Securities Act § 17(a)(1) and (3); Exchange Act Section 10b and Rule 10b-5(a) and (c): employ any device, scheme, or artifice to defraud or engage in any transaction, practice or course of business which operates as a fraud or deceit

See Section III.B. above.

E. Investment Advisers Act § 207: willfully make any untrue statement of material fact or omit to state a material fact in any registration application or report filed with the Commission

96	Various of UASNM's Forms ADV filed between 2008 and 2011 contained untrue statements of material fact and/or omitted to state material facts.
	At least some of UASNM's ADVs between 2008 and 2011 did not disclose that Mr. Malouf sold his RJFS branch to Mr. Lamonde and was receiving ongoing payments from Mr. Lamonde in connection with that sale. FOF #8. 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 #9. Item 12 of UASNM's Form ADV, Part II, dated April 12, 2010, affirmatively

	<p>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 #10.</p> <p>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 #29</p> <p>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 #30.</p> <p>Items 10 and 12 of UASNM'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 UASNM to utilize RJFS to generate revenue that may be utilized to make payments to Malouf. FOF #31.</p> <p>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 #154.</p> <p>See Exhibit 193.</p>
97	<p>The disclosure in items 8 and 9 of UASNM Forms ADV Part II, dated February 4, 2008, August 20, 2008, and December 1, 2008, that employee(s) of UASNM were or may be registered representatives of RJFS and could receive commissions did not relate to Malouf because Malouf was no longer a registered representative of RJFS.</p>
	<p>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 #5.</p>
98	<p>Malouf, as CEO, president, and majority shareholder of UASNM had final and ultimate responsibility for UASNM's Forms ADV between 2006 and the end of 2010.</p>
	<p>When Malouf was CEO of UASNM he was "top dog" and Mr. Kopczynski and Mr. Hudson worked for him. FOF #197.</p> <p>Malouf, Kopczynski, Hudson and outside compliance consultant ACA each were involved to varying degrees in preparing or reviewing UASNM's Forms ADV from 2008 through May 2011. FOF #32.</p> <p>Malouf performed at least a cursory review of some form ADVs focusing on</p>

disclosures relating to himself and RJFS. FOF #33.

Q [McKenna] Okay. You didn't really my answer [my question], though. My question is, do you acknowledge that between 2006 and the end of 2007 you had final and ultimate responsibility for UASNM's ADVs?

A [Malouf] No.

Q Can we show the investigative testimony at page 342, lines 3 to 15.

The question you were asked was, "In your view between 2006 and the end of 2010, who had final and ultimate responsibility for the ADV and its contents for UASNM?" Your response: "The buck stops with me, there's no doubt, as the president and CEO and the majority shareholder. I gave Joe the final approval on that document every time. I mean, it would just be a given. I mean, I trusted him. I think he disclosed and did everything that he was supposed to do until, once again, when I took over and started looking at the ADV Part 2 brochure, the things that weren't disclosed, the things that should have been disclosed, and I did the best I could." Did I read that properly?

A Yes.

Malouf Trial Tr. 11/20/2014 at 993:12-994:9.

Q [McKenna] So, you disagree that you had the ultimate responsibility that they were accurate?

A [Malouf] I guess I'm partially responsible, for sure, as a CEO, but, I mean –

Malouf Trial Tr. 11/20/2014 at 994:25-995:3.

99

Malouf had a responsibility to make full and accurate disclosure in the Forms ADV regarding his ongoing relationship with Raymond James.

Q [McKenna] Okay. Would you agree with me that with regard to ADV disclosures that related to you personally, you had an even greater responsibility?

A [Malouf] Yes.

Q And you did understand that you had a responsibility to make full and accurate disclosure in the ADVs regarding your ongoing relationship with Raymond James?

A I did.

	Malouf Trial Tr. 11/20/2014 at 995:4-12.
100	<p>All or most of the Form ADVs created between October 1, 2009 and April 12, 2010, portions of which are reflected in Exhibit 193, were provided to UASNM clients.</p> <p>Q [McKenna] Okay. And I'll just represent that it was only required to be filed with the commission starting in January of 2011.</p> <p>So, fair to say, then, that one of these form ADVs, if not all or most of them, starting with the October 1, 2009, until the April 12, 2010 form, would have been provided to UASNM customers?</p> <p>MR. KING: Objection. Leading.</p> <p>MR. McKENNA: That's fair.</p> <p>JUDGE PATIL: Cross-examination, so –</p> <p>Q You can answer my question.</p> <p>JUDGE PATIL: -- overruled.</p> <p>A [Kopczynski] I believe it would have been fair that they would have received those, yes.</p> <p>Malouf Trial Tr. 11/21/2014 at 1377:13-1378:1.</p> <p>Q [Jamieson] Okay. The second sentence in there, starts on the second line, says, "Client acknowledges that adviser has delivered, and client has acknowledged receipt and thoroughly read information providing disclosures in the form of ADV" -- "in the form of Form ADV Part II regarding the background of adviser's business practices and fee schedules." Do you see that?</p> <p>A [Owens] Mm-hmm.</p> <p>Q And by signing this document on the last page, you acknowledge that you had received and thoroughly read the information on that form; correct?</p> <p>A I probably didn't read it word for word, but I looked over it.</p> <p>Malouf Trial Tr. 11/20/2014 at 906:7-20.</p>
101	Form ADV Part II is an application under Section 207 of the Investment Advisor's Act.

Schedule F of Form ADV Continuation Sheet for Form ADV Part II	Applicant: UASNM, Inc. d/b/a Universal Advisory Services	SEC File Number: [REDACTED]	Date: February 4, 2008
	See, e.g., Exhibit 24 at MaloufSEC 000542: "Applicant: UASNM, Inc. d/b/a Universal Advisory Services"		

F. Aiding or abetting UASNM's violations of Sections 206(1), (2), and 207: UASNM made false statements in Forms ADV and on its website; Malouf knowingly or recklessly provided substantial assistance

102	Malouf substantially assisted in the preparation of UASNM Forms ADV.
	<i>See Proposed Findings of Fact ##98-99.</i>
103	As UASNM's CEO and majority shareholder, Malouf had control over UASNM's Forms ADV.
	<i>See Proposed Findings of Fact ##98-99.</i>
104	Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV.
	<i>See Proposed Findings of Fact ##96-99.</i>

G. Aiding and abetting and causing Section 206(4) violation: UASNM made false website statements about independence, commissions, conflicts of interest, and best execution; Malouf knowingly or recklessly provided substantial assistance

105	UASNM's website contained false statements about UASNM's independence, lack of compensation by commission, conflicts of interest, and best execution.
	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

	<p>multiple sources ensuring that the best cost/service/execution mix is met for its clients."</p> <p>"We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients' portfolios." FOF #12.</p> <p>Exs. 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 #131.</p> <p>ACA advised UASNM in the September 2007 Annual Report that the language in its marketing materials "void of conflicts of interest" could be misleading, and recommended removing it. FOF #85.</p> <p>ACA advised UASNM in the December 2009 Annual Report that the language on its website "void of conflicts of interest" could be misleading, and recommended removing it. FOF #86.</p> <p>The "void of conflicts of interest" language continued to appear on the UASNM website and in marketing materials in 2008-2010. FOF #87.</p>
106	<p>Malouf knowingly and recklessly provided substantial assistance regarding the false website statements.</p>
	<p>Malouf was the lead salesman for UASNM, and he was familiar with at least some of the contents of its website. FOF #13.</p> <p>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 #189.</p> <p>Malouf's understanding was that what's on the UASNM website for the public to consume is what's important. FOF #190.</p> <p>Mr. Malouf previously testified that he "probably read" statements on UASNM's website in 2008 about UASNM being independent and not charging commissions. FOF #191.</p> <p>Q [McKenna] Did UASNM maintain a website during this period, 2008 to 2011?</p> <p>A [Hudson] We did.</p>

	<p>Q And did Mr. Malouf have any involvement in that website?</p> <p>A He did.</p> <p>Q What was his involvement in that?</p> <p>A Well, he -- in different generations of it, different versions of it, there was a version that he and Mr. Womack really created together. There was another version that he had hired the daughter of a client to develop. And so, for at least part of that period, the website was something that he took the lead on developing.</p> <p>Malouf Trial Tr. 11/17/2014 at 157:3-16.</p> <p>Q. [King] All right. Let's talk for a minute about marketing materials and the website. Who was responsible for the content of the website?</p> <p>A [Malouf] In its genesis, the gathering of information came from Scott Womack. He ran it through me, I ran it through Joe. We had the office in California, and it was put up on the website.</p> <p>A few years later it was taken down and revamped by Twin Studios (sic), and I think that's when we took off all the family office -- the professional football player stuff we were looking at in Beverly Hills. There were two of those, but I was part of the creative part of that.</p> <p>Malouf Trial Tr. 11/20/2014 at 1137:25-1138:12.</p>
107	<p>As a participant in the agreement with Lamonde to receive payments related to bond trades made through Raymond James, Malouf had a duty to disclose the material aspects of that agreement.</p>
	<p><i>See Proposed Findings of Fact ##23-31.</i></p>
108	<p>Malouf failed to disclose material aspects of his agreement with Lamonde to UASNM's Chief Compliance Officer, Joe Kopczynski, and its Chief Operating Officer, Matt Keller.</p>
	<p><i>See Proposed Finding of Fact #79.</i></p>
109	<p>Malouf caused false statements about UASNM's independence and receipt of commissions, and about his receipt of a Bachelor of Science degree to appear on UASNM's Forms ADV and its website.</p>
	<p><i>See FOF##335-336; Proposed Findings of Fact ##102-108.</i></p>

110	As UASNM's CEO and majority shareholder, Malouf had control over UASNM's website.
	See Proposed Findings of Fact #106.
111	Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV.
	See Proposed Findings of Fact ##102-110.

H. Miscellaneous

112	Item 12.B of Form ADV Part II (and Item 12.A of the new Part 2A) requires an investment adviser to disclose the factors considered in selecting brokers and determining the reasonableness of their commissions.
	<p>Item 12.B</p> <p>Clients wishing to implement UAS's advice are free to select any broker and/or dealer that they wish and are so informed. Those Clients who wish UAS to recommend a broker will receive a recommendation based on the broker's cost, skill, reputation, dependability, and compatibility with Clients, and not upon any arrangement between the recommended broker and UAS.</p> <p>UAS utilizes Charles Schwab & Co., Inc. ("Schwab") and NATC for a significant portion of Client brokerage transactions. Fidelity Registered Investment Advisory Group ("Fidelity") may serve as a sub-custodian for client accounts serviced through NATC. UAS may also utilize the services of other service providers that best meet Client needs. The entity that is recommended by UAS is dependent upon a number of factors, including the following: trade execution, custodial services, trust services, record keeping, and research, and/or ability to access a wide variety of securities. UAS reviews on a periodic and systematic basis its third-party relationships to ensure that it is fulfilling its fiduciary duty to seek best execution on Client transactions.</p> <p>For Investment Management services UAS recommends, and Clients may choose, to place trades through a discount broker or trust company. UAS may recommend the services of Schwab, Fidelity, a similar discount broker, or NATC. The selection is made on the basis of rates, execution services available to the Client, and other relevant factors. Clients may pay transaction fees to the above brokers or trust company for the purchase of some "no-load" funds.</p> <p>Ex. 24 at UASNM0442.</p>
113	Malouf's conduct was repetitive and long-lasting. Over three plus years, Malouf received 74 payments from Lamonde based upon UASNM trades executed through the Raymond James branch he sold to Lamonde, totaling \$1,068,084.13.
	See Proposed Finding of Fact #16.

PAYMENTS MADE BY LAMORNE TO SEALCOF

Date	Check Amount	Memo	Month, Quarters, & Annual	Total
1/27/08	1173	25,000.00	January	25,000.00
2/13/08	1176	58,870.76	February	58,870.76
2/28/08	1177	58,752.79	Feb	58,752.79
1st Quarter 2008				
4/14/08	1143	57,750.00	April	57,750.00
4/28/08	1141	57,820.00	April	57,820.00
4/29/08	1142	57,500.00	MAY	57,500.00
4/29/08	1145	58,000.00	MAY	58,000.00
5/23/08	1148	55,500.00	May	55,500.00
5/29/08	1158	57,500.00	May	57,500.00
6/11/08	1159	57,864.00	1st 1/2 of June	57,864.00
2nd Quarter 2008				
7/2/08	1172	57,500.00	July	57,500.00
7/16/08	1177	58,000.00	July	58,000.00
7/23/08	1200	57,500.00	July	57,500.00
8/21/08	1208	55,167.00	August	55,167.00
8/28/08	1209	55,250.00	August	55,250.00
8/29/08	1151	57,382.00	August	57,382.00
9/16/08	1154	57,464.00	Aug	57,464.00
3rd Quarter 2008				
9/17/08	1158	55,500.00	September	55,500.00
9/24/08	1153	55,424.82	September	55,424.82
4th Quarter 2008				
10/29/08	1155	58,500.00	Oct 08	58,500.00
10/29/08	1166	58,000.00	Oct 08	58,000.00
11/11/08	1168	57,500.00	November	57,500.00
11/26/08	1170	57,400.00	Nov 1/2 NOV	57,400.00
12/16/08	1178	57,500.00	1/2 Dec	57,500.00
12/16/08	1179	58,100.00	Dec 1/2 Dec	58,100.00
12/24/08	1176	57,500.00	December 1/2 Dec	57,500.00
Total For Year 2008				
1/27/08	1170	57,500.00	January	57,500.00
1/27/08	1243	59,300.00	January	59,300.00
2/11/08	1245	59,867.56	February	59,867.56
2/28/08	1278	58,865.89	February Feb 08	58,865.89
3/11/08	1246	57,500.00	1st 1/2 March	57,500.00
3/25/08	1254	57,000.00	2nd 1/2 March	57,000.00
Total For Year 2008				
4/27/08	1261	55,000.00	APRIL	55,000.00
4/27/08	1262	57,500.00	APRIL	57,500.00
5/13/08	1266	57,077.37	2nd 1/2 MAY	57,077.37
Total For Year 2008				
1/2/08	1270	58,000.00	January	58,000.00
2/2/08	1263	58,620.00	Feb 1st 1/2 2008	58,620.00
2/28/08	1268	58,077.48	2nd 1/2 Feb 1/2 of 2008 (gross)	58,077.48
3/11/08	1265	58,500.00	1st 1/2 MARCH	58,500.00
3/26/08	1250	58,000.00	PARTIAL 2nd 1/2 of Sept	58,000.00

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Maurice Lamonde's Payments to Dennis Malouf				Monthly, Quarterly, & Annual
Date	Check	Amount	Memo	Totals
8/15/09	1374	\$43,517.00	memo	
8/23/09	1375	\$4,856.00	2nd 1/2 Dec	\$48,373.00
Total for Third Quarter 2009				\$48,373.00
10/19/09	1383	\$3,000.00	COVER PAY	
10/28/09	1384	\$34,199.00	2nd 1/2 of OCT	\$37,199.00
11/11/09	1385	\$20,075.00	PART of 1/2 NOV 1st (gross)	
11/25/09	1327	\$8,710.00	84% of 2nd 1/2 NOV \$55700 ADVANCE	\$25,728.00
12/29/09	1373	\$20,367.00		
12/11/09	1372	\$20,800.00	PARTIAL 2nd 1/2 Dec	
12/23/09	1376	\$2,300.00	memo	
12/29/09	1377	\$5,000.00	Dec	\$40,667.00
Total for Fourth Quarter 2009				\$115,201.00
Total for Year 2009				\$266,210.75
1/11/10	1384	\$14,368.11	1st 1/2 JAN	
1/14/10	1379	\$23,100.00	ADVANCE 2nd 1/2 JAN	
1/27/10	1381	\$6,184.00	2nd 1/2 Jan BAL of PARTIAL	\$43,652.11
2/24/10	1390	\$24,529.18	2nd 1/2 Feb	\$24,529.18
3/1/10	1391	\$2,800.00	memo	
3/8/10	1392	\$2,200.00	memo	
3/19/10	1393	\$22,000.00	1500	
3/24/10	1395	\$15,000.00	memo	\$45,000.00
Total for First Quarter 2010				\$73,331.29
4/19/10	1432	\$8,358.00	memo	
4/28/10	1435	\$7,387.00	memo	\$15,745.00
5/2/10	1447	\$6,000.00	memo	
5/10/10	1449	\$277.00	memo	\$6,322.00
Total for Second Quarter 2010				\$22,352.00
7/27/10	1477	\$8,263.00	1st half July '10	
7/29/10	1471	\$8,000.00	memo	
7/28/10	1480	\$5,000.00	memo	
7/29/10	1481	\$7,475.00	memo	\$29,798.00
Total for Third Quarter 2010				\$30,738.00
11/3/10	1453	\$12,000.00	ADVANCE 2nd 1/2 NOV	
11/10/10	1455	\$5,510.00	1st 1/2 NOV	
11/27/10	1457	\$1,800.00	memo	
11/24/10	1462	\$21,483.00	2nd half Nov '10	\$38,463.00
12/23/10	1466	\$16,828.00	2nd 1/2 of Dec ADVANCE	
12/29/10	1467	\$8,892.50	Dec 2nd 1/2	\$25,283.50
Total for Fourth Quarter 2010				\$84,168.50
Total for Year 2010				\$227,742.79
1/19/11	1471	\$14,482.00	1st 1/2 Jan	\$14,482.00
Total for First Quarter 2011				\$14,482.00
4/11/11	1574	\$552.56	memo	\$150.56
Total for Second Quarter 2011				\$150.56
Total for Year 2011				\$15,032.56
Total for 2008-2011				\$1,064,084.13

Exhibit 201.

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In summary, from January 2008 until at least June 2010, Malouf failed to disclose to UASNM clients, UASNM employees, and UASNM's outside compliance consultant the details of his arrangement with Lamonde to be paid for trades executed though Lamonde's Raymond James branch.

See Proposed Findings of Fact ##79-84, 87, 88; FOF ##34, 35, 136, 151, 153, 154.

115

Bell testified that the account transfer could have occurred without Lamonde or Malouf providing a list of accounts.

Q Now, in order to accomplish a transfer of accounts, would it have been necessary for either Mr. Malouf or Mr. Lamonde to have provided a list of the accounts to transfer?

A Not with this type of transition, no.

	<p>Q Why not?</p> <p>A Because we would be able to pull the accounts under those particular rep numbers and systematically make that change.</p> <p>Malouf Trial Tr. 11/19/2014 at 635:9-17.</p>
116	<p>As CEO and head of UASNM's marketing efforts, Malouf had responsibility for ensuring that the information on UASNM's website was accurate.</p>
	<p>Proposed Finding of Fact #106.</p> <p>Q. [McKenna] During the period of 2008 until May 2011, what [who] at UASNM led its marketing efforts?</p> <p>A. [Hudson] Well like I said before, we were all advisors and we all had areas of different responsibility and marketing, and business development would be Mr. Malouf's expertise.</p> <p>Q. And would that fall under his ambit not because of his expertise, but also because of his role as chief executive officer and majority shareholder?</p> <p>A. Clearly uninvolved in every RFP. In terms of producing marketing materials that would be his area of responsibility.</p> <p>Q. Did UASNM maintain a website during this period, 2008 to 2011?</p> <p>A. We did.</p> <p>Q. And did Mr. Malouf have any involvement in that website?</p> <p>A. He did.</p> <p>Q. What was his involvement in that?</p> <p>A. Well, he -- in different generations of it, different versions of it there was a version that he and Mr. Womack really created together. There was another version that he had hired the daughter of a client to develop. And so, for at least part of that period, the website was something that he took the lead on developing.</p> <p>Malouf Trial Tr. 11/17/2014 at 156:16-157:16.</p>

VI. Proposed Conclusions of Law

1	<p>Broker activity can be evidenced by 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.</p>
	<p><i>See, e.g., SEC v. George</i>, 426 F.3d 786, 797 (6th Cir. 2005); <i>SEC v. Kenton Capital, Ltd.</i>, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998).</p>
2	<p>Transaction based compensation is not a prerequisite to finding liability for acting as an unregistered broker-dealer.</p>
	<p><i>Bandimere</i>, ID Release No. 507, 2013 WL 5553898, at *52, 82 (October 8, 2013) (finding that “[e]ven assuming [Respondent] did not receive transaction based compensation, the evidence that he acted as an unregistered broker is overwhelming”).</p>
3	<p>IM-2420-2 provides that “payment of compensation to registered representatives after they cease to be employed by a member of the Association – or payment to their widows or other beneficiaries – will not be deemed in violation of Association Rules provided bona fide contracts call for such payment,” provided also that the unregistered representative does not solicit new business or open new accounts.</p>
	<p>IM-2420-2. Continuing Commissions Policy</p> <p>The Board of Governors has held that the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association.</p> <p>However, payment of compensation to registered representatives after they cease to be employed by a member of the Association — or payment to their widows or other beneficiaries — will not be deemed in violation of Association Rules, provided bona fide contracts call for such payment.</p> <p>Also, a dealer-member may enter into a bona fide contract with another dealer-member to take over and service his accounts and, after he ceases to be a member, to pay to him or to his widow or other beneficiary continuing commissions generated on such accounts.</p> <p>An arrangement for the payment of continuing commissions shall not under any circumstances be deemed to permit the solicitation of new business or the opening of new accounts by persons who are not registered. Any arrangement for payment of continuing commissions must, of course, conform with any applicable laws or regulations.</p> <p>This policy recognizes the validity of contracts entered into in good faith between employers and employees at the time the employees are registered representatives of the employing members. Such a contract may vest in an employee the right to receive continuing compensation on business done in the event the employee retires and the right to designate such payments to his widow or other beneficiary.</p> <p>Exhibit 234 at 4.</p>
4	<p>The 2008 SIFMA no-action letter explicitly references three prior no-action letters issued in 1993, 1994 and 1998 respectively, prior to Malouf’s sale of the RJFS</p>

	<p>branch, that contain requirements similar to those in the SIFMA letter, most notably the requirement that the retiring representative sever association with any broker, dealer, or investment adviser, and not engage in the securities business.</p>
	<p>or her former clients, the retiring financial consultant will terminate his or her association with the company, and will not be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, nor hold himself or herself out as being so associated, and the retiring financial consultant will not engage in the securities business in any fashion. If a retiring financial</p> <p>transactions for the purpose of soliciting them to engage in securities transactions, nor may he or she discuss such transactions with them. Upon retirement, the former Financial Consultant must sever his association with Shearson, and he may not be associated with any other broker, dealer, or investment adviser (nor hold himself out as being so associated) during the term of the agreement. In short, the Financial Consultant may not engage in the securities business in any fashion.</p> <p>The Participant will receive no compensation for new account referrals after retirement, and the Participant will agree that, during the three-year period, he or she will not (a) contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, (b) discuss securities accounts or securities transactions with former clients, (c) maintain any license as a registered or associated person of, or otherwise be associated with, PSI or any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, or hold himself or herself out as being so associated, or (d) engage in the securities business in any other manner. The</p> <p>Inc., and all prevailing policies, procedures and rules of Gruntal. The Participant further agrees that, after the retirement date, he/she will not contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, will not discuss securities accounts or securities transactions with former clients, will not maintain any license as a registered person or otherwise be associated with Gruntal or any other broker, dealer, municipal securities dealer, government securities dealer, investment company or investment adviser or hold himself/herself out as being so associated and will not engage in the securities industry to any other extent or manner which would require the Participant to register with any regulatory or self-regulatory organizations, agencies, commissions or exchanges.</p> <p>the agreement. Upon retirement of the retiring financial consultant and during the term of the agreement, the retiring financial consultant will not contact, either directly or indirectly, his or her former clients for the purpose of soliciting them to engage in securities transactions, and will not discuss securities transactions with his or her former clients, the retiring financial consultant will terminate his or her association with the company, and will not be associated with any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, nor hold himself or herself out as being so associated, and the retiring financial consultant will not engage in the securities business in any fashion. If a retiring financial</p> <p>The Participant will receive no compensation for new account referrals after retirement, and the Participant will agree that, during the three-year period, he or she will not (a) contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, (b) discuss securities accounts or securities transactions with former clients, (c) maintain any license as a registered or associated person of, or otherwise be associated with, PSI or any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, or hold himself or herself out as being so associated, or (d) engage in the securities business in any other manner. The</p>

	<p>Inc., and all prevailing policies, procedures and rules of Gruntal. The Participant further agrees that, after the retirement date, he/she will not contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, will not discuss securities accounts or securities transactions with former clients, will not maintain any license as a registered person or otherwise be associated with Gruntal or any other broker, dealer, municipal securities dealer, government securities dealer, investment company or investment advisor or hold himself/herself out as being so associated and will not engage in the securities industry to any other extent or manner which would require the Participant to register with any regulatory or self-regulatory organizations, agencies, commissions or exchanges.</p> <p>Ex 4 to Division's Pre-Hearing Brief at 2, 3, 9, and 13.</p>
5	<p>FINRA Interpretive Letters prior to Malouf's sale of the RJFS branch to Malouf also instructed selling brokers that they could not "solicit new business, open new accounts, or service the accounts generating the continuing commission payments."</p>
	<p>NASD IM-2420-2 ("Continuing Commissions Policy") provides that member firms are permitted to pay continuing commissions to registered representatives after they cease to be employed by a member, if, among other things, a bona fide contract between the member and the registered representative calling for the payments was entered into in good faith while the person was a registered representative of the employing member. The arrangement may not permit RR to solicit new business, open new accounts, or service the accounts generating the continuing commission payments. Based on the facts you have provided, and assuming a bona fide contract covering the arrangement is duly executed, RR would be eligible to receive continuing commissions from Commonwealth under NASD IM-2420-2.</p> <p>Exhibit 166 at 1.</p>
6	<p>Scienter may be established by showing extreme recklessness.</p>
	<p><i>SEC v. Steadman</i>, 967 F.2d 636, 641-42 (D.C. Cir. 1992).</p>
7	<p>One of an investment adviser's "basic duties" under Section 206 is to ensure that its clients' transactions are executed "in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances."</p>
	<p><i>In re Kidder, Peabody & Co., Inc.</i>, Rel. No. 34-8426, 43 SEC 911, 915 (Oct. 16, 1968) (settled).</p>
8	<p>Failure to seek best execution or to conduct best execution review constitutes a violation of Section 206(2) and 207 of the Advisers Act.</p>
	<p><i>Jamison, Eaton & Wood, Inc.</i>, Rel. No. IA-2129, 2003 WL 21099127, at *1 (May 15, 2003) (settled). ("By failing to disclose its potential conflict of interest and other brokerage options, and by failing to seek to obtain best execution, Jamison violated Sections 206(2) and 207 of the Advisers Act.")</p>

9	An adviser's failure to seek best execution for clients can be established by showing that clients paid higher commissions with no apparent corresponding benefit.
	<p><i>Jamison, Eaton & Wood, Inc.</i>, Rel. No. IA-2129, 2003 WL 21099127, at *6 (May 15, 2003) (settled).</p> <p>“Taking into consideration the higher commissions paid by some of Jamison's clients, and the lack of any apparent corresponding benefit such as better trading prices, Jamison failed to seek to obtain best execution for these clients.”</p>
10	Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit any person from employing a fraudulent scheme, making misstatements or omissions of material fact, or engaging in any practice or course of business that operates as a fraud upon any person in connection with the purchase or sale of a security.
	15 U.S.C. § 78j(b) and 17 CFR § 240.10b-5.
11	“To be liable for a scheme to defraud, a defendant must have ‘committed a manipulative or deceptive act in furtherance of the scheme.’”
	<i>SEC v. Fraser</i> , 2010 U.S. Dist. LEXIS 7038, at *23 (D. Ariz. Jan. 28, 2010), quoting <i>Cooper v. Pickett</i> , 137 F.3d 616, 624 (9th Cir. 1997).
12	The defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.
	<p><i>Simpson v. AOL Time Warner, Inc.</i>, 452 F.3d 1040, 1048 (9th Cir. 2006), vacated on other grounds by <i>Simpson v. Homestore.com</i>, 519 F.3d 1041, 1041-42 (9th Cir. 2008).</p> <p>“We hold that to be liable as a primary violator of § 10(b) for participation in a “scheme to defraud,” the defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme.”</p>
13	Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact or omit to state any material fact required to be stated in a report filed with the Commission, including Form ADV.
	<p><i>Vernazza v. SEC</i>, 327 F.3d 851, 858 (9th Cir. 2003).</p> <p>“Advisers Act § 207 criminalizes willfully making false statements of material fact, or material omissions, in applications or reports to the Commission, such as a Form</p>

	ADV.”
14	The materiality standard for Section 207 claims is essentially the same as for violations of Section 206.
	<i>Vernazza v. SEC</i> , 327 F.3d 851, 858 (9 th Cir. 2003). “Although scienter is required for some of these violations, the element of a materially false statement is satisfied by essentially the same conduct for all of the statutes in question.”
15	Section 207 does not require a showing of scienter.
	<i>Jamison</i> , Release No. IA-2129, 2003 WL 21099127, at *6.
16	An investment adviser can violate Section 207 by failing to adequately disclose the factors considered in selecting a broker or by misstating that it would seek to obtain best execution.
17	Advisers Act Section 206(4) prohibits a registered investment adviser from engaging “in any act, practice, or course of business which is fraudulent, deceptive, or manipulative[,]” including those defined by the Commission.
	15 U.S.C. § 80b-6(4).
18	Neither scienter nor proof of client harm is required under Adviser’s Act Section 206(4).
	<i>SEC v. C.R. Richmond & Co.</i> , 565 F.2d 1101, 1105 (9th Cir. 1977), citing <i>SEC v. Capital Gains Research Bureau, Inc.</i> , 375 U.S. 180, 84 S.Ct. 275, 11 L.Ed.2d 237 (1963). “The court there also held that the Commission does not have to show, in injunctive actions, that an investment adviser's activities injured his clients or were intended to harm clients or prospective clients.”
19	Rule 206(4)-1(a)(5) prohibits a registered investment adviser from publishing, circulating, or distributing advertisements containing untrue statements of material facts, or that are otherwise false or misleading.
	17 CFR § 206(4)-1(a)(5).

20	A website can be considered an advertisement for purposes of violations of Rule 206 and Section 17(a).
	<p><i>Fields</i>, Release No. 474, 2012 WL 6042354, at *12 (Dec. 5, 2012).</p> <p>“Fields's misrepresentations on Platinum's website violated Securities Act Section 17(a), and his misrepresentations on the AFA website and in AFA's Form ADV and brochure violated Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1(a)(5).”</p>
21	To establish aiding and abetting liability, the Commission must show: “that a principal committed a primary violation; (2) that the aider and abettor provided substantial assistance to the primary violator, and (3) that the aider and abettor had the necessary ‘scienter’ - i.e. that she rendered such assistance knowingly or recklessly.”
	<i>Graham v. S.E.C.</i> , 222 F.3d 994, 1000 (D.C. Cir. 2000); <i>see also First Interstate Bank of Denver v. Pring</i> , 969 F.2d 891, 898 (10th Cir. 1992).
22	The Tenth Circuit applies a “recklessness” standard for aiding and abetting liability and the D.C. Circuit requires a showing that the aider and abettor acted with “extreme recklessness.”
	<p>“We hold that in an aiding-and-abetting case based on assistance by action, the scienter element is satisfied by recklessness.”</p> <p>First Interstate Bank, 969 F.2d at 903.</p> <p>“Two of our decisions, rendered after <i>Investors Research</i>, make this point. <i>Graham v. SEC</i>, 222 F.3d 994 (D.C.Cir.2000); <i>SEC v. Steadman</i>, 967 F.2d 636 (D.C.Cir.1992). Both hold that “extreme recklessness” may support aiding and abetting liability.”</p> <p><i>Howard v. SEC</i>, 376 F.3d 1136, 1143 (D.C. Cir. 2004).</p>
23	Negligence is sufficient to establish liability for causing a violation when a person is alleged to have caused a primary violation that does not require scienter.
	<p><i>KPMG Peat Marwick</i>, Release No. 34-43862, 2001 WL 34138819 (Jan. 19, 2001), <i>aff'd</i>, <i>KPMG v. SEC</i>, 289 F.3d 109 (D.C. Cir. 2002).</p> <p>“ORDERED that KPMG LLP (formerly known as KPMG Peat Marwick LLP) cease and desist from committing any violation or future violation of Rule 2-02(b) of Regulation S-X, or from being a cause of any violation or future violation of Section 13(a) of the Securities Exchange Act of 1934 or Rule 13a-1 thereunder due to an act or</p>

	omission KPMG LLP knows or should know will contribute to such violation, by having any transactions, interests, or relationships that would impair its independence under Rule 2-01 of Regulation (sic) S-X or under Generally Accepted Auditing Standards (GAAS).”
24	“While it is unnecessary to show that an aider and abettor knew he was participating in or contributing to a securities law violation, there must be sufficient evidence to establish ‘conscious involvement in impropriety.’”
	<i>SEC v. Slocum, Gordon & Co.</i> , 334 F. Supp. 2d at 184. Respondent’s Pre-Hearing Brief at 16.
25	“This involvement may be demonstrated by proof that the aider or abettor ‘had general awareness that his role was part of an overall activity that [was] improper.’”
	<i>SEC v. Coffey</i> , 493 F.2d 1304, 1316 (6 th Cir. 1974); Respondent’s Pre-Hearing Brief at 16.
26	In order to establish the element of willfulness, the Division must show that Malouf merely intended to engage in the action alleged regardless of his knowledge that the act constituted a violation of the securities law.
	<i>SEC v. Moran</i> , 922 F. Supp. 867, 900 (S.D.N.Y. 1996); Respondent’s Pre-Hearing Brief at 15.
27	The element of substantial assistance is met when, based upon all the circumstances surrounding the conduct in question, a defendant’s actions are a ‘substantial causal factor’ in bringing about the primary violation.
	<i>SEC v. K.W. Brown & Co.</i> , 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007); Respondent’s Pre-Hearing Brief at 18.
28	“Reckless conduct is, at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care ... to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.”
	<i>Rolf v. Blyth, Eastman Dillon & Co.</i> , 570 F.2d 38, 47 (2d Cir. 1978); Respondent’s Pre-Hearing Brief at 19.
29	To establish a defense of reliance on others Malouf must show that he did not withhold any material information from the professional on whom he purports to rely.

	<p><i>Provenz v. Miller</i>, 102 F.3d 1478, 1491 (9th Cir. 1996), <i>citing C.E. Carlson, Inc. v. SEC</i>, 859 F.2d 1429, 1436 (10th Cir. 1988).</p> <p>“If it is true that defendants withheld material information from their accountants, defendants will not be able to rely on their accountant's advice as proof of good faith. <i>See C.E. Carlson, Inc. v. SEC</i>, 859 F.2d 1429, 1436 (10th Cir.1988) (stating that full disclosure to professional must be established to support the defense of reliance on expert opinion).”</p>
30	<p>By its express wording, Section 2462 applies only where the SEC seeks relief that a court deems punitive – “any civil fine, penalty, or forfeiture, pecuniary or otherwise.”</p>
	<p>§ 2462. Time for commencing proceedings</p> <p>Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.</p> <p>28 U.S.C. § 2462.</p>
31	<p>Section 2462 does not limit the time for the SEC to file claims seeking equitable or remedial relief such as disgorgement, permanent injunctions, or officer and director bars.</p>
	<p>Equitable relief in SEC enforcement actions may include orders of disgorgement, injunctions against future violations, or imposition of an officer and director bar. Some courts have held that some or all of these equitable remedies are exempt from § 2462's limitations period as a matter of law. <i>See Kelly</i>, 663 F.Supp.2d at 286 (citing cases); <i>Zacharias v. SEC</i>, 569 F.3d 458, 473 (D.C.Cir.2009) (holding disgorgement not punitive). Other courts have engaged in a fact-intensive inquiry to determine whether the equitable remedies sought in a particular case are remedial or punitive. <i>See SEC v. Alexander</i>, 248 F.R.D. 108, 115–16 (E.D.N.Y. 2007) (discussing alternative approaches); <i>Johnson v. SEC</i>, 87 F.3d 484, 488 (D.C.Cir.1996). This unsettled question is immaterial to this case, as the district court</p>

	<p>undertook the fact-intensive inquiry articulated in <i>Johnson</i> and applied in <i>Jones</i>.</p> <p><i>SEC v. Quinlan</i>, 373 Fed. Appx. 581, 588 (6th Cir. 2010) (affirming district court’s conclusion that “the risk to the investing public outweighed the severe collateral consequences of the equitable relief, and, therefore, that the permanent injunction and officer and director bar were remedial rather than punitive.”); <i>see also Zacharias v. SEC</i>, 569 F.3d 458, 471-72 (D.C. Cir. 2009) (“[A]n ‘order to disgorge is not a punitive measure; it is intended primarily to prevent unjust enrichment.’”) (citations omitted); <i>SEC v. Packetport.com, Inc.</i>, 2006 WL 2798804, *3 (D. Conn. Sept. 27, 2006) (granting motion to strike statute of limitations affirmative defense because SEC sought only “equitable relief in the form of, inter alia, disgorgement, officer and director bars, and injunctions”).</p>
32	<p>The continuing violation doctrine provides that an action is timely filed if it is filed within the required limitations period measured from the date the unlawful conduct stopped.</p>
	<p>Denial of defendant's limitations argument is also appropriate in light of the SEC's reliance on the continuing violation doctrine. Under that doctrine, if the alleged unlawful practice continues into the limitations period, the complaint is timely if filed within the required limitations period (in this case, five years) measured from the end of that practice. <i>See Havens Realty Corp. v. Coleman</i>, 455 U.S. 363, 380–81, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982).</p> <p><i>SEC v. Kovzan</i>, 807 F. Supp. 2d 1024, 1035-36 (D. Kan. 2011); <i>see also SEC v. Geswein</i>, 2011 WL 4541303, *2 (N.D. Ohio Sept. 29, 2011) (equitable tolling includes the continuing violations doctrine); <i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1340 (S.D. Fla. 2010) (“[W]here the appropriate facts exist, the ‘continuing violations’ doctrine may apply to the statute of limitations in SEC enforcement actions.”); <i>SEC v. Kelly</i>, 663 F. Supp. 2d 276, 288 (S.D.N.Y. 2009) (rejecting motion to dismiss SEC’s claim for penalties on statute of limitations grounds because continuing violation doctrine in combination with a tolling agreement made the claims timely filed); <i>but cf.</i>, <i>SEC v. Caserta</i>, 75 F. Supp. 2d 79, 89 (S.D.N.Y. 1999) (“[I]t is not at all certain that the continuing violation doctrine applies in securities fraud actions.”); <i>SEC v. Jones</i>, 2006 WL 1084276, *4-5 (S.D.N.Y. Apr. 25, 2006).</p>
33	<p>Section 21C of the Exchange Act provides that, if the Commission finds that any person has violated any rule or regulation under the Exchange Act, the Commission may publish its findings and enter an order requiring any person that was a cause of the violation to cease and desist from causing any future violation of the same provision, rule, or regulation.</p>
	<p>15 U.S.C. §78u-3(a).</p>

34	In deciding whether to issue a cease-and-desist order, the court must consider whether there is a reasonable likelihood of future securities violations.
	<i>KPMG Peat Marwick LLP</i> , Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).
35	In the ordinary course, a past violation suffices to establish a risk of future violations.
	<i>Id.</i>
36	The showing necessary to demonstrate the likelihood of future violations is “significantly less than that required for an injunction.”
	<i>KPMG Peat Marwick LLP</i> , Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).
37	In deciding whether to issue a cease-and-desist order, the court may consider several factors including the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, the respondent's opportunity to commit future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.
	<i>KPMG Peat Marwick LLP</i> , Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).
38	This inquiry is a flexible one and no one factor is dispositive.
	<i>KPMG Peat Marwick LLP</i> , Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).
39	It is undertaken not to determine whether there is a “reasonable likelihood” of future violations but to guide the court’s discretion.
	<i>KPMG Peat Marwick LLP</i> , Rel. No. 34-43862, 2001 WL 47245 at *26 (Jan. 19, 2001).
40	While the Hearing Officer must limit disgorgement to “ill-gotten gains,” he has broad discretion and may consider all of a defendant’s wrongful conduct in violation of the securities laws in ordering disgorgement and calculating the amount

	to be disgorged.
	<p>“While the Court must limit any disgorgement remedy to “ill-gotten gain,” the rationale behind the equitable remedy of disgorgement allows for broad consideration of all of a defendant's wrongful conduct in connection with the violation of the securities laws. In this regard, district courts enjoy discretion extending not only to determining whether to order disgorgement but also to calculating any amount to be ordered disgorged.”</p> <p><i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1358 (S.D. Fla. 2010).</p>
41	The measure of disgorgement need not be tied to losses suffered by defrauded investors.
	<p>“The measure of disgorgement need not be tied, for example, to losses suffered by defrauded investors.”</p> <p><i>SEC v. Huff</i>, 758 F. Supp. 2d 1288, 1358 (S.D. Fla. 2010)</p>
42	Section 15(b)(6) of the Exchange Act provides that the Commission shall censure, limit, suspend, or bar any associated person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds that such censure, limitation, suspension, or bar is in the public interest.
	<p>(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--</p> <p>(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;</p>

48	<p>Prejudgment interest represents the amount of money the wrongdoer made or could have made by investing monies wrongfully obtained.</p>
	<p>Koenig's "pecuniary gain" is the amount he obtained by his fraudulent accounting, plus the economic return he made (or could have made) by investing that sum between 1992 and the date of disgorgement. And prejudgment interest is the right way to estimate the second component.</p> <p><i>S.E.C. v. Koenig</i>, 557 F.3d 736, 745 (7th Cir. 2009).</p>
49	<p>An award of prejudgment interest is not a punitive award but rather is compensatory in nature.</p>
	<p>We have noted that awards of prejudgment interest are compensatory, not punitive, and that the district court should make its interest decision through "an assessment of the equities."</p> <p><i>S.E.C. v. Lauer</i>, 478 F. Appx 550, 557 (11th Cir. 2012).</p>
50	<p>While an award of prejudgment interest is within the Court's discretion, courts have routinely ordered the payment of prejudgment interest where disgorgement is also awarded.</p>
	<p>The Court finds that prejudgment interest should be awarded to prevent Gordon from profiting from his illegal scheme. The Court has reviewed plaintiff's proposed calculation of prejudgment interest and finds that it is reasonable. <i>See</i> Dkt. # 84-1, at 92-94. Therefore, the SEC will be awarded prejudgment interest in the amount of \$10,307,489.92 on the award of disgorgement.</p> <p><i>S.E.C. v. Gordon</i>, 822 F. Supp. 2d 1144, 1162 (N.D. Ok. 2011); <i>S.E.C. v. O'Hagan</i>, 901 F. Supp. 1461, 1473 (D. Minn. 1995); <i>SEC v. Stephenson</i>, 732 F. Supp. 438, 439 (S.D.N.Y. 1990).</p>
51	<p>The prejudgment interest rate used by the Commission is the same rate used by the Internal Revenue Service to calculate underpayment penalties.</p>
	<p>The SEC has adopted the tax underpayment rate for prejudgment interest in its administrative proceedings and courts routinely apply this rate when awarding prejudgment interest on an order of disgorgement.</p> <p><i>S.E.C. v. Gordon</i>, 822 F. Supp. 2d 1144, 1161-62 (N.D. Ok. 2011).</p>

52	That rate is defined as the Federal short term rate (also known as the period rate) plus three percentage points (also known as the annual rate).
	<p>(2) Underpayment rate.--The underpayment rate established under this section shall be the sum of--</p> <p>(A) the Federal short-term rate determined under subsection (b), plus</p> <p>(B) 3 percentage points.</p> <p>26 U.S.C. § 6621(a)(2).</p>
53	Courts have upheld the use of this rate in Commission enforcement actions.
	<p>The SEC requests prejudgment interest, in the amount of \$10,307,489.92, on the award of disgorgement using the rate employed the Internal Revenue Service for the underpayment of taxes.</p> <p><i>S.E.C. v. Gordon</i>, 822 F. Supp. 2d 1144, 1161-1162 (N.D. OK. 2011); <i>see also S.E.C. v. First Jersey</i>, 101 F.3d 1450, 1476 (2nd Cir. 1996); <i>S.E.C. v. Drexel Burnham Lambert, Inc.</i>, 837 F. Supp. 587, 612 n.8 (S.D.N.Y. 1993).</p>
54	<p>In determining whether a civil penalty should be imposed against an individual, and the amount of the penalty, if one is appropriate, courts look to a number of factors, including:</p> <ul style="list-style-type: none"> • the egregiousness of the defendant’s conduct; • the degree of the defendant’s scienter; • whether the defendant’s conduct created substantial losses or the risk of substantial losses to other persons; • whether the defendant’s conduct was isolated or recurrent; and <p>whether the penalty should be reduced due to the defendant’s demonstrated current and future financial condition.</p>
	<p>Though the maximum penalty is set by statute on the basis of tier, the actual amount of the penalty is left up to the discretion of the district court. In exercising this discretion, courts weigh “(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be</p>

	<p>“reduced due to the defendant's demonstrated current and future financial condition.”</p> <p><i>SEC v. Tourre</i>, 4 F. Supp. 3d 579, 593 (S.D.N.Y. 2014) (citations omitted); <i>see also SEC v. Opulentica</i>, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007); <i>SEC v. Haligiannis</i>, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007); <i>SEC v. Lybrand</i>, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003); <i>SEC v. Coates</i>, 137 F. Supp. 2d 413, 429 (S.D.N.Y. 2001).</p>
55	<p>A three-tier penalty structure established by the Securities Act, Exchange Act, and Advisors Act provide that a third-tier penalty is appropriate where (A) the act or omission involved a deliberate or reckless disregard of a regulatory requirement; and (B) such act or omission directly or indirectly created a significant risk of substantial losses to other persons.</p>
	<p>(2) Amount of penalty</p> <p>(A) First tier</p> <p>The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.</p> <p>(B) Second tier</p> <p>Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.</p> <p>(C) Third tier</p> <p>Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if--</p> <p style="padding-left: 40px;">(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(II) such violation directly or indirectly resulted in substantial losses or created</p>

	<p>“reduced due to the defendant's demonstrated current and future financial condition.”</p> <p><i>SEC v. Tourre</i>, 4 F. Supp. 3d 579, 593 (S.D.N.Y. 2014) (citations omitted); <i>see also SEC v. Opulentica</i>, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007); <i>SEC v. Haligiannis</i>, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007); <i>SEC v. Lybrand</i>, 281 F. Supp. 2d 726, 730 (S.D.N.Y. 2003); <i>SEC v. Coates</i>, 137 F. Supp. 2d 413, 429 (S.D.N.Y. 2001).</p>
55	<p>A three-tier penalty structure established by the Securities Act, Exchange Act, and Advisors Act provide that a third-tier penalty is appropriate where (A) the act or omission involved a deliberate or reckless disregard of a regulatory requirement; and (B) such act or omission directly or indirectly created a significant risk of substantial losses to other persons.</p>
	<p>(2) Amount of penalty</p> <p>(A) First tier</p> <p>The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) \$5,000 for a natural person or \$50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.</p> <p>(B) Second tier</p> <p>Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) \$50,000 for a natural person or \$250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.</p> <p>(C) Third tier</p> <p>Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if--</p> <p style="padding-left: 40px;">(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(II) such violation directly or indirectly resulted in substantial losses or created</p>

	<p>a significant risk of substantial losses to other persons.</p> <p>Section 20(d) of the Securities Act (15 USC § 77t(d)), Section 21(d)(3) of the Exchange Act (15 USC § 78u(d)(3)), and Section 209(e) of the Investment Advisors Act(15 U.S.C. § 80b-9(e)).</p>
56	<p>The maximum third-tier penalty for conduct occurring after March 3, 2009 and on or before March 5, 2013 is \$150,000 per violation.</p>
	<p>The adjustments set forth in Table III apply to violations occurring after February 14, 2005.</p> <p>U.S. Code citation 15 U.S.C. 77t(d) For natural person/substantial losses or risk of losses to others Adjusted maximum penalty amount 130,000</p> <p>17 C.F.R. § 201.1003.</p> <p>The adjustments set forth in Table IV apply to violations occurring after March 3, 2009.</p> <p>U.S. Code citation 15 U.S.C. 77t(d) For natural person/substantial losses or risk of losses to others Adjusted maximum penalty amount 150,000</p> <p>17 C.F.R. § 201.1004.</p>

Dated this 12th day of January, 2015.


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