UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-16223

In the Matter of

Sands Brothers Asset Management,

LLC, Martin Sands, Steven Sands and

Christopher Kelly

Respondents,

CHRISTOPHER KELLY'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF POINTS IN SUPPORT THEREOF

Introduction

As the Securities and Exchange Commission (the "SEC") Staff has advised on multiple occasions this matter revolves around noncompliance with the 120 day provision (the "120 Day Provision") of Rule 206(4)-2 under the Investment Advisers Act of 1940 (the "Advisers Act"). If Sands Brothers Asset Management ("SBAM") and/or Martin and Steven Sands had caused the audits of the funds managed by SBAM (the "SBAM Funds") to have been completed and delivered in satisfaction of the 120 Day Provision, this matter would not have been pursued. The failure to deliver audits within the 120-day period is the sine qua non of this matter.

As discussed in detail herein, there are indisputable material facts that clearly dictate dismissing this matter as against Christopher Kelly.

Background

Communications with the SEC. Mr. Kelly was first advised that he might be a target in this matter on February 7, 2014, surprisingly not by the SEC, but by Martin Sands, one of SBAM's principals. In connection with advising Mr. Kelly that his name had come up in the investigation Martin Sands said to Mr. Kelly "Call the SEC I don't care." Martin Sands would later (on April 25, 2014) advise Mr. Kelly that his comment was precipitated by a recognition that Mr. Kelly had the right to handle the matter independently of SBAM. With nowhere else to turn to determine the status of the investigation vis a vis himself, Mr. Kelly called Wendy Tepperman of the SEC Staff on February 11, 2014. Mr. Kelly left a voicemail, stating unequivocally that the communications with the Staff were to be confidential. Confidentiality was appropriate, and necessary, to allow Mr. Kelly to handle the matter independent of other parties that may have a conflict with the interests of Mr. Kelly.

Mr. Kelly and Ms. Tepperman, along with Ms. Nancy Brown of the SEC Staff, had conversations subsequent to Mr. Kelly's voicemail in February 2014. In each of those conversations confidentiality was further emphasized. While Mr. Kelly provided the SEC Staff information about the matter at hand on a confidential basis, Ms. Tepperman and Ms. Brown informed Mr. Kelly that they would refuse to speak to him substantively about the matter.

According to Ms. Tepperman and Ms. Brown, they were refusing to speak substantively to Mr. Kelly because they had been persuaded by Martin Kaplan of the law firm of Gusrae Kaplan Nusbaum PLLC (the "Gusrae Firm") that he represented Mr. Kelly (which was not the case). Mr. Kelly told the Staff that Mr. Kaplan did not represent him. Mr. Kelly further advised

the Staff that he had not signed any retainer agreement or any conflict letter with Mr. Kaplan's firm. The Staff had no basis for taking the position that Mr. Kaplan represented Mr. Kelly.

Nevertheless, even with Mr. Kelly's representations in hand, the Staff refused to provide Mr. Kelly with any substantive information about the investigation, including any information about the status of the investigation vis a vis himself. In particular, the Staff refused to advise Mr. Kelly whether he was a target in the investigation. The Staff, however, did insist that Mr. Kelly deal with Mr. Kaplan, the attorney for Mr. Kelly's employer, (i) even though Mr. Kelly expressly stated, "I'm not represented by [SBAM counsel] Marty Kaplan", and (ii) despite the obvious conflict between the interests of Mr. Kelly and the interests of SBAM and its principals.

Given the length of time that *the Staff indicated* it had been persuaded that Mr. Kaplan represented Mr. Kelly (when he didn't), it must be assumed that the Staff shared confidences about Mr. Kelly's case with Mr. Kaplan.

Based on the Staff's stubborn insistence to do so, Mr. Kelly reached out to Mr. Kaplan, making contact with him on or about March 3, 2014 after he had returned from a trip to Florida. Mr. Kelly then informed Ms. Tepperman in a voicemail that he had had a conversation with Mr. Kaplan. Ms. Tepperman then left Mr. Kelly a voicemail in which she threatened to breach the confidentiality of Mr. Kelly's communications with the Staff if Mr. Kelly did not choose counsel by the next morning. With such a short window of time, with nowhere else to turn, and in view of the Staff's threat to transmit the contents of the confidential communications to SBAM, Mr. Kelly agreed to engage Mr. Kaplan as his attorney.

Ms. Tepperman had previously assured Mr. Kelly that she would give Mr. Kelly ample time to consider his options with respect to the retention of counsel once he had spoken to Mr. Kaplan. Ms. Tepperman did not honor her promise to Mr. Kelly, and Mr. Kelly was forced to

choose counsel overnight without even knowing whether he was a target (as the Staff had refused to tell him). The Staff's actions violated the express policy of the SEC as provided in SEC Form 1662 that the "choice of counsel, and the responsibility of that choice, is yours." The actions of the Staff deprived Mr. Kelly of a defense independent of adverse parties.

T*he Gusrae Firm*. Mr. Kelly delivered a written executed engagement and conflict letter to Mr. Kaplan's office in early March 2014, at which point the Gusrae Firm commenced representation of Mr. Kelly.

On April 25, 2014, without any notice to, or consent from, Mr. Kelly, and for reasons that remain shrouded in mystery, the SEC Staff delivered Mr. Kelly's confidential voicemail messages to Mr. Kaplan, who, as the Staff well knew, was also representing SBAM and Martin and Steven Sands. Not surprisingly, without any notice to, or consent from, Mr. Kelly, and despite Mr. Kaplan's claim, and professional obligation, to represent the interests of Mr. Kelly, Mr. Kaplan immediately shared the confidential voicemail messages with Martin and Steven Sands, who were adverse to Mr. Kelly. Mr. Kaplan then abruptly terminated his firm's representation of Mr. Kelly.

Staff Actions and Consequences. The Staff's breach of confidentiality and related actions violated the New York Rules of Professional Conduct, which prohibit (i) conduct involving dishonesty, fraud, deceit, or misrepresentation, (ii) conduct that is prejudicial to the administration of justice, and (iii) conduct that adversely reflects on a lawyer's fitness as a lawyer. (See Rule 8.4 (c), (d) and (h)) New York attorneys, and presumably SEC attorneys, are also expected to act with the highest possible degree of ethical conduct. The Staff failed miserably in this regard.

Directly as a result of the Staff's delivery of the confidential communications to Mr. Kaplan, Martin and Steven Sands (i) stopped paying Mr. Kelly his salary, (ii) refused to pay him his 2013 bonus of $50,000 (which had already been earned and promised), and (iii) stopped providing him the benefit of indemnification (which he had previously enjoyed). It is Mr. Kelly's understanding that despite putting an end to Mr. Kelly's indemnification, Martin and Steven Sands continue to provide for their personal indemnification through the SBAM Funds, as well as the indemnification of SBAM, which they control.

On May 6, 2014, prior to any substantive discussions between the SEC and Mr. Kelly, Mr. Kelly received a Wells Notice relating to this matter. This was the first communication received by Mr. Kelly, written or oral, from any party stating that the SEC was considering bringing proceedings against Mr. Kelly.

Mr. Kelly would later learn that the Staff had proposed a formal written settlement for Mr. Kelly in early 2014, but that the Staff, inexplicably, had transmitted the settlement offer not to him, but to the Gusrae Firm. The Gusrae Firm did not provide Mr. Kelly with the terms of the SEC's settlement offer until November 2014.

The Compliance Program

Mr. Kelly acknowledges his responsibility to manage the SBAM compliance program. It is indisputable, however, that he made all relevant parties aware of the 120 Day Provision as a part of his CCO responsibilities.

Mr. Kelly has had discussions with Martin and Steven Sands and other SBAM employees about the 120 Day Provision since shortly after his arrival at the firm in April 2008, at Compliance Meetings and otherwise. The 120 Day Provision has been discussed with outside counsel, including the Gusrae Firm, on many occasions. Accordingly, all SBAM personnel have

been well aware of the 120 Day Provision since 2008, and likely from before Mr. Kelly's arrival at SBAM. The auditors and other parties involved in the audits have also been aware of the 120 Day Provision. The importance of the 120 Day Provision has been a constant theme underlying the audit efforts.

SBAM employees, including Martin and Steven Sands, have executed Acknowledgements on an annual basis whereby they acknowledge reviewing and understanding the Compliance Manual, which contains a description of the custody rule. See Attachment I, which is from 2011, representing typical annual Acknowledgements used from 2008.

Pursuant to Section IIIB 1. and 2. of the Compliance Manual, all employees of SBAM have a responsibility to ensure compliance with (i) all applicable laws, including federal securities laws, and (ii) SBAM's compliance policies. See Attachment II.

At the Compliance Meetings Mr. Kelly emphasized the personal responsibility each employee had for his or her own compliance. See Attachment III, from 2008, representing a typical excerpt from the Scripts for all annual Compliance Meetings.

There is no basis for treating Mr. Kelly as a guarantor of employee compliance.

Points

Audit Process Authority. Mr. Kelly, who served as Chief Compliance Officer ("CCO") and Chief Operating Officer of SBAM during the relevant period, and who managed the SBAM compliance program, was never given the authority or responsibility for the preparation and timely delivery of the audits for the SBAM Funds. Mr. Kelly, with an undergraduate degree in History and a JD, had no training or prior experience with respect to the preparation of financial audits, and was clearly not qualified for such a role. Accordingly, any assertion that Mr. Kelly had sole or significant audit preparation and delivery responsibilities, or that SBAM or Martin or

Steven Sands "relied" on Mr. Kelly for the preparation and delivery of the audits, would be at odds with reality and make no sense on its face. There has not been, and there will be not be, any documentation produced that will prove that Mr. Kelly had been delegated authority with respect to the preparation and timely delivery of the audits because no such documentation exists.

Since 2012 when the SEC advised SBAM it was looking at the financial audit records Martin and Steven Sands (i) never altered their authority and responsibility for the audit process, (ii) never blamed Mr. Kelly for the timing of the audits, and (ii) never advised Mr. Kelly that they were "relying" on him in connection with the audits. Any suggestion otherwise is a post hoc invention.

Martin and Steven Sands, who founded and run SBAM as Co-Chairmen and Senior Portfolio Managers, and who have decades of financial experience working for such firms as Rodman & Renshaw, Oppenheimer and Co., L.F. Rothschild and Sands Brothers and Co., Ltd, had authority and responsibility with respect to the audit process, and they exercised it.

Martin and Steven Sands also delegated financial functions to the Greenwich Fund Services ("GFS") administration/bookkeeping firm, which was compensated for performing financial work for SBAM and the SBAM Funds. Douglas Bisio and John Lanser, the members of GFS, have relevant financial experience. Pursuant to its contracts with SBAM and the SBAM Funds, GFS did substantial work in connection with the audits, and was compensated handsomely by both SBAM and the SBAM Funds as required under such contracts. The SBAM Funds also delegated financial functions to the Funds' administrators and auditors. Mr. Kelly was not hired by SBAM as a financial/audit professional, and was not compensated as such.

Mr. Kelly readily acknowledges, as noted at Item 23 of the Order Instituting Administrative and Cease-and Desist Proceedings (the "Order"), that he signed engagement and representation letters for the auditors, and communicated with auditors. To say that Mr. Kelly was a "principal contact" for the auditors, as the Staff claims in Item 23, is only true if every professional at SBAM was a "principal contact", as every professional at SBAM communicated with the auditors. These assertions prove nothing more than that Mr. Kelly was willing to act responsibly in connection with the audit process, which he assisted to the extent that he was able. Signing engagement and representation letters reflects positively on Mr. Kelly, as does his willingness to communicate with the auditors. Martin and Steven Sands, in contrast, refused to sign engagement letters for the auditors and in some cases delayed signing representation letters.

As for the other assertions in Item 23 about Mr. Kelly's actions, what is most notable about them is that they are internally inconsistent. Apparently, according to the Staff, Mr. Kelly was both very active – engaging the auditors, signing representation letters, and serving as a principal contact with the auditors – which according to the Staff were bad things (they are not), and also insufficiently active. The reality is that as discussed elsewhere Mr. Kelly made absolutely sure that Martin and Steven Sands and the other relevant players were fully aware of the 120 Day Provision. Mr. Kelly did things, as acknowledged by the Staff (see above), that a CCO is not specifically required to do, and in particular are not part of his job responsibilities. Mr. Kelly took an active role in the audit process, along with the other professionals at SBAM, because it was a meaningful way to supplement the more formal compliance process, and to move the audit process forward.

Cohen & Wolf. Pursuant to the Stipulation and Agreement with the Connecticut Department of Banking (the "Connecticut DOB") dated September 9, 2009 (the "2009

Connecticut Order"), the prominent Connecticut law firm of Cohen & Wolf was retained by SBAM to audit the SBAM compliance program. The 2009 Connecticut Order emanated from SBAM actions and inactions in the 2006/2007 period, well before Mr. Kelly's employment with SBAM.

Cohen & Wolf was approved by the Connecticut DOB pursuant to the 2009 Connecticut Order based on the firm's expertise in compliance matters, including with respect to the Advisers Act. Richard Slavin Esq. of Cohen & Wolf conducted five audits on-site over a number of days, collecting and reviewing a significant amount of material and interviewing SBAM personnel. After each on-site review he completed a comprehensive Compliance Report setting forth his conclusions (the "C&W Compliance Reports").

Among the findings in the C&W Compliance Reports were that (i) Martin and Steven Sands were ultimately responsible for the management of the SBAM Funds, (ii) SBAM provided monthly or quarterly reports to the SBAM Fund investors, (iii) no surprise audits were required, and (iv) the SBAM compliance program functioned well. See Attachments IV, V and VI, which are excerpts from the C&W Compliance Reports.

Notably, even after Cohen & Wolf was advised of the SEC's inquiry into the audit matter in 2012 (see Attachments VI and VII (the 2012 Litigation Report associated with the C&W Compliance Report)), Cohen & Wolf did not revise any of its opinions, or suggest any revisions to the Compliance Manual with respect to custody.

It is well established that investment advisory personnel can rely on professional advisers such as Cohen & Wolf. Mr. Kelly relied on the C&W Compliance Reports, including its opinion that no surprise audits were required. To this date Cohen & Wolf has never retracted any of its findings or opinions contained in the various C&W Compliance Reports.

The SEC. In connection with the SEC's ongoing monitoring and assessment of the SBAM compliance program, the SEC requested copies of each of the C&W Compliance Reports, and such Reports were delivered to the SEC for its review. At no time during the relevant period did the SEC take issue with any of the findings or opinions contained in the five C&W Compliance Reports delivered to and reviewed by the SEC. If the SEC had had a problem with the C&W Compliance Reports it presumably would have notified Mr. Kelly or other personnel at SBAM, but it did not do so.

In connection with productions of documents to the SEC in 2009 and 2010, SBAM delivered to the SEC a copy of its Compliance Manual. After reviewing the material the SEC did not recommend any changes to the Compliance Manual.

Mr. Kelly was entitled to rely on the acceptance of the C&W Compliance Reports and Compliance Manual by the SEC.

The Connecticut DOB. The Connecticut DOB, which received copies of all of the C&W Compliance Reports, has likewise never taken issue with any aspect of such Reports.

Mr. Kelly was entitled to rely on the acceptance of the C&W Compliance Reports by the Connecticut DOB.

The *Gusrae Firm*. The Gusrae Firm was counsel to SBAM during the entire relevant period, including for this matter and the September 13, 2010 SEC Consent Order entered against SBAM and Martin and Steven Sands (the "2010 SEC Order"). The 2010 SEC Order, which was negotiated by the Gusrae Firm, had its genesis in conduct during the 2004/2005 period, long before Mr. Kelly's employment with SBAM.

Mr. Kelly discussed custody matters with the Gusrae Firm on multiple occasions. At no time in its discussions with Mr. Kelly did the Gusrae Firm ever counsel Mr. Kelly to change the

SBAM compliance program or revise the Compliance Manual. At no time did the Gusrae Firm ever counsel Mr. Kelly that the SEC's claims in this matter had merit.

Mr. Kelly was entitled to rely on the Gusrae Firm.

Legal Responsibilities. Mr. Kelly did not have a legal title at SBAM during the relevant period, and did not operate in a legal capacity. Handling, reviewing and interpreting custody matters indisputably had a legal component. As a non-legal employee of SBAM, Mr. Kelly was not involved with the legal component of custody. The legal component with respect to custody matters was handled by the Gusrae Firm, Cohen & Wolf, and other outside counsel.

Mr. Kelly has no litigation or enforcement experience.

Q&A Exemption. The SEC's Division of Investment Management has made it crystal clear that failing to comply with the 120 Day Provision does not necessarily mean a violation of Rule 206(4)-2 (the "Custody Rule").

In the SEC's Staff Responses to Questions About the Custody Provision, updated as of September 1, 2013 (the "September 1, 2013 Release"), but originally issued well before the relevant period, the following question and answer (the "Q and A") are posed (Question VI.9):

"Q: If a pooled investment vehicle is subject to an annual audit and its adviser is relying on the "audit provision" under rule 206(4)-2(b)(4), would the adviser be in violation of the rule if the pooled vehicle fails to distribute its audited financial statements within 120 days after the end of its fiscal year?

A: The Division would not recommend enforcement action for a violation of rule 206(4)-2 against an adviser that is relying on rule 206(4)-2(b)(4) and that reasonably believed that the pool's audited financial statements would be distributed within the 120-

day deadline, but failed to have them distributed in time under certain unforeseeable circumstances."

This Q and A is directly applicable to the matter at hand as SBAM was relying on Rule 206(4)-2(b)(4). Rule 206(4)-2(b)(4) provides that none of the Custody Rule requirements are applicable if the funds managed by the advisor distribute their GAAP audited financials within 120 days of the end of the fiscal year. The Q and A however articulates the Staff's position that (i) there will not be an enforcement action, and (ii) there will be no violation of the Custody Rule, where the advisor "reasonably believed that the pool's audited financial statements would be distributed within the 120-day deadline, but failed to have them distributed in time under certain unforeseeable circumstances." (Such conditions are herein referred to as the "Q&A Exemption.")

The Question above asks whether "*the adviser would be in violation of the rule*." The reference to "the rule" clearly refers to the Custody Rule, which is the subject of the September 1, 2013 Release. The Question more broadly is clearly posed to answer *whether there would be a Custody Rule violation* if the Q&A Exemption is satisfied. The Answer is clear that there would not be any Custody Rule violation, stating that where the conditions of the Q&A Exemption are satisfied, there would be no "enforcement for a violation of the Custody Rule." There is no need to parse this language as it means exactly what it says.

Mr. Kelly is not aware of any audit period where he did not initially reasonably believe that the 120 Day Provision would be satisfied, or where the specific circumstances that ultimately led to the timing of audits were reasonably foreseeable. Obviously the closer to the deadline the clearer the picture that emerges, and at some point it would become clear that the audits would not go out within the 120-day period. It would not make sense to apply the test

near the conclusion of the 120-day period as that approach would render the exemption meaningless. Mr. Kelly is not aware of any fact that renders the Q&A Exemption unavailable.

The 120 Day Provision is clearly not sacrosanct. If it were sacrosanct the Q&A Exemption would not have been issued. The Q&A Exemption makes the availability of the exemption from complying with the Custody Rule requirements dependent not on meeting the 120-day deadline, but on whether (at or near the launch of the audit process) the advisor reasonably believed the deadline would be met, and whether the certain circumstances of the delivery after the 120-day period were foreseeable. The Q&A Exemption makes it clear that the 120 Day Provision does not have to be met in all cases. Audits can be delivered after the 120-day deadline with the advisor still in compliance with the Custody Rule.

This makes sense because the audits are in essence a substitute for the other requirements of the Custody Rule. An audit is a good substitute for the surprise examination because an audit includes procedures that closely mimic what would be done in a surprise examination. In the case of SBAM, the auditors did in fact check the funds and securities (or to say it another way, the funds and securities were "audited"). The 120 Day Provision acknowledges that an audit is sufficient to protect investors from the potential issues that could be associated with advisors who have custody.

In the case of SBAM, SBAM had no control over funds (i.e., cash), which were all kept with custodians. There was no means for SBAM to do anything inappropriate with respect to funds held at custodians. Any checkwriting from the SBAM Funds required a signature from Douglas Bisio, who works for the independent administration/bookkeeping firm GFS. Mr. Kelly is not aware of any instance during the relevant period when Martin or Steven Sands controlled

the disbursement of funds from a SBAM Fund. Mr. Kelly was instrumental in establishing these security procedures.

Further, as discussed with, and assented to by, the SEC in 2009, the private securities were under lock and key (see Attachment VIII). Given the small number and value of the securities no custodian would take them. Even if SBAM personnel attempted to conduct malfeasance with respect to such securities, there was no way to do so. There is no way to transfer the private securities to any party without the consent of the transfer agent, which has its own internal procedures. Mr. Kelly is not aware of any instance during the relevant period when Martin or Steven Sands had access to the private securities.

To Mr. Kelly's knowledge, the SEC Staff has not to date offered any proof whatsoever that SBAM did not meet the requirements of the Q&A Exemption. In any case, the Staff will be required to prove that the Q&A Exemption was not available to SBAM (or Mr. Kelly) during the relevant period. Merely stating the fact that the audits were delivered after the 120-day period is not of course any proof whatsoever. Nor is there any evidentiary value in the fact that prior years' audits were delivered after such period. The results of prior years' audits are not relevant to the advisor's state of mind at the commencement of subsequent audits.

The Q&A Exemption is clearly based on the advisor's reasonable belief at or near the time the audit is launched (otherwise the provision would be rendered meaningless), and whether the failure to deliver within the 120-day period was based on "certain" unforeseeable circumstances. The emphasis on "certain" suggests the SEC is focused on circumstances particular to the audit at hand. It is of course foreseeable that the audit may not go out within the 120 days for any number of reasons easily surmised at the commencement of the audit. For example it may be said at such commencement that an audit may not go out within the requisite

period because the auditor will come up with some last minute requests, or it might take longer than expected to complete valuations or appraisals. The Q&A Exemption would be rendered meaningless if it was deemed not available because the ultimate "certain" circumstance fell into one or more highly general categories. It is clear the Q&A Exemption is focused on particular circumstances that were known at the launch of the audit. If particular circumstances were known at the commencement of the audit, then those circumstances presumably would not fairly be considered "unforeseeable", and if those particular circumstances were the cause of the delay, the Q&A Exemption presumably would not be available. On the other hand, if the particular circumstances causing the untimely audit were not known at the outset of the audit, then those circumstances would be appropriately deemed "unforeseeable."

To provide one example, to the best of Mr. Kelly's recollection, late in the audit process for the 2012 audit, the auditor asked that an appraisal be done on equipment owned by the Trinity Cable LLC ("Trinity Cable") portfolio company. It is noteworthy that the appraisal was requested in connection with a possible increase in the valuation of Trinity Cable, not a decrease. Mr. Kelly recollects that that appraisal was one reason why the 2012 audit was delivered after the 120-day period. It may be argued that it was foreseeable that the auditors would ask for an appraisal of portfolio assets. That may be true, but asking for additional appraisals does not necessarily cause the audit to be delivered after the 120-day period, and more importantly, at the outset of the 2012 audit, it is Mr. Kelly's recollection that there was no knowledge that the auditors would ask for the particular Trinity Cable appraisal that the auditors in fact asked for. Mr. Kelly understands that SBAM personnel were not aware of the possibility of the particular appraisal request until the request was actually made (late in the audit process). Accordingly, the "certain" circumstances of the Trinity Cable appraisal were not in fact foreseeable, as the

particular appraisal had not been considered by anybody at the outset of the audit. Accordingly, the particular Trinity Cable appraisal request would not deny the availability of the Q&A Exemption.

The SEC Staff's Claim. There are a number of significant weaknesses in the Staff's claim. As noted already, the Staff has provided no proof whatsoever that the Q&A Exemption was not available. Further, the Staff appears to be taking the position that the mere fact of the delivery of the audits after the 120-day period proves a violation of the Custody Rule, but that is clearly not the case. The Q&A Exemption is available to any advisor relying on Rule 206(4)-2(b)(4), as SBAM has been.

The Staff's argument that the Q&A Exemption is not available presumably relies on the Staff substituting its judgment in hindsight for that of SBAM personnel. But the Staff was not present during the outset of the various audit periods, and cannot know the reality of the circumstances during such time periods. The reality is that at the outset of each audit period Mr. Kelly, and presumably other SBAM personnel, did reasonably believe that the audits would be delivered within the 120-day period. Nothing the Staff may present can change that reality.

Presumably the Staff would argue that it was unreasonable for SBAM personnel, including Mr. Kelly, to believe that the audits with respect to the 2013 fiscal year would go out within the 120-day period. The 2013-year audits, however, did go out within that timeframe, rendering the Staff wrong.

Ultimately an audit will go out only after the auditing firm approves the final audit, which includes a review by the auditing firm's audit committee. This process can take an amount of time unforeseeable initially, and involve issues not considered initially, but which are considered important for the auditor. Some of these issues may be based on GAAP accounting matters,

which can often be poorly understood by, or unknown to, the investment advisory firm. Administrators and other third parties can also create bottlenecks that are unforeseeable. The SEC clearly understands the central role of third parties in the auditing process and has made amends for this in its Q&A Exemption.

Form ADV Provision. The SEC's guidance with respect to the 120 Day Provision is also clearly reflected in the Form ADV, which is filed by all registered investment advisors. As shown on Attachment IX, the SEC asks in Item 9C about means of satisfying the Custody Rule. One choice, at Item 9C(2), which is applicable to SBAM, reads as follows:

An independent public accountant audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools.

This answer, as drafted by the SEC (the "Form ADV Provision"), focuses not on the 120 Day Provision, which goes unmentioned, but merely on the audit and the distribution thereof to investors. This is consistent with the Q&A Exemption, which permits under certain circumstances the delivery of audits after the 120-day period. Neither the Q&A Exemption nor the Form ADV Provision puts a deadline on the delivery of the audited financial statements.

As provided by the Q&A and Form ADV Provisions, the SEC focus is clearly on the ultimate receipt by investors of the audited financial statements. It is indisputable that all of the SBAM Funds were audited in each year, and that the audits were delivered to the SBAM Fund investors. The SEC has not objected to the contents of such audits, which were carefully prepared in accordance with GAAP by PCAOB compliant audit firms.

Cornick Garber. The Cornick Garber Sandler LLP auditing firm ("Cornick") audited most of the SBAM Funds. On or about September 2013 Cornick issued a letter (the "Cornick Letter") with respect to its prior audit work. The Cornick Letter, referred to at Item 21 of the

Order, makes claims regarding the audit process. Cornick issued the Cornick Letter after it had received subpoenas from the SEC and is an apparent attempt to deflect from Cornick's own central role in the audit process, which role included delivering requests for information late in the audit process. The Cornick Letter has no evidentiary value in this matter other than making it clear that Cornick has significant concerns about the role it played in connection with this matter.

The Cornick Letter purports to claim that certain events in connection with the audits were foreseeable, but that makes little sense because if they were foreseeable, Cornick itself, intimately familiar with the SBAM portfolio, would have mentioned them to SBAM at an earlier stage in the audit process. It was Cornick's core role in the audit process to advise SBAM of items it would need for its audit review; it was not possible for SBAM personnel, none of whom were accountants, to surmise everything that would be required by Cornick.

Item 21 of the Order makes reference in the last sentence to Mr. Kelly acting as "President and Chief Executive Officer" of a portfolio company for which audit information was supplied to Cornick. This is clearly a reference to the Trinity Cable situation, which is discussed above.

While Mr. Kelly's recollection is that the request for the appraisal to increase the Trinity Cable valuation came late in the audit process, it is also noteworthy that just a couple of weeks into Mr. Kelly's tenure as an officer of Trinity Cable Steven Sands called him and told him in stark terms that he was not to exercise any management authority with respect to Trinity Cable as he and Gavin Watson were to run Trinity Cable.

Trinity Cable had come out of bankruptcy and was controlled by two SBAM Funds for which Steven Sands was a Senior Portfolio Manager and Gavin Watson was a Portfolio Manager. Trinity Cable is a limited liability company, a corporate form that often does not even

have any officers, and is typically managed by its members. In the case of Trinity Cable Steven Sands simply asserted the right of its members, the SBAM Funds, to exercise management authority through the Senior Portfolio Manager (himself) and Portfolio Manager (Mr. Watson).

Conclusion

The following are indisputable material facts that dictate dismissing this matter as against Mr. Kelly.

- Mr. Kelly spent six years working tirelessly to protect the SBAM Fund investors and succeeded in doing so.
- Due to Mr. Kelly's efforts at no time was there any danger of the misappropriation of any cash or securities.
- This matter involves no malfeasance whatsoever.
- Mr. Kelly's over 30-year regulatory record is unblemished.
- Martin and Steven Sands never delegated to Mr. Kelly the authority or responsibility for the preparation and delivery of the audits.
- Martin and Steven Sands never "relied" on Mr. Kelly for the preparation and delivery of the audits.
- Mr. Kelly has no background or training with respect to the preparation and delivery of audits.
- The C&W Compliance Reports findings included that the SBAM compliance program functioned well and that there was no surprise audit requirement. Mr. Kelly was entitled to rely on Cohen & Wolf.
- The SEC reviewed all of the C&W Compliance Reports, never issuing any objection to the Reports. Mr. Kelly was entitled to rely on the SEC.

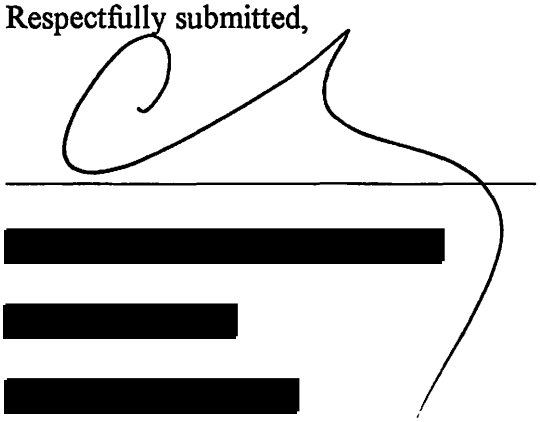
- The Gusrae Firm acted as counsel to SBAM during Mr. Kelly's tenure as CCO, including advising on custody matters, and acting as counsel for the 2010 SEC Order and this matter. At no time did the Gusrae Firm advise Mr. Kelly to revise the SBAM compliance program or Compliance Manual, and in particular did not do so in the wake of the 2010 SEC Order or the commencement of this matter in 2012, both of which matters were handled by the Gusrae Firm. Mr. Kelly was entitled to rely on the Gusrae Firm.
- Assertions in this matter by the Gusrae Firm, whether on behalf of itself or SBAM or Martin or Steven Sands, should be viewed with suspicion given its longstanding role advising SBAM and its personnel on Custody Rule matters.
- The Q&A Exemption was issued prior to the commencement of the relevant period. Mr. Kelly appropriately relied on the Q&A Exemption, and did so in good faith.
- In 2009 the SEC was advised of, and assented to, the retention of the private securities under lock and key.
- Section IIIB 1. and 2. of the SBAM Compliance Manual provides that *all* employees of SBAM have a responsibility to ensure compliance with federal securities laws. At every Compliance Meeting Mr. Kelly emphasized the personal responsibility each employee had for his or her own compliance.
- The failure to grant this motion would deter experienced compliance professionals from joining firms with less-than-stellar compliance histories and thereby have the perverse effect of weakening the compliance function.

- The Staff has engaged in misconduct in connection with this matter, including (i) treating Mr. Kaplan as Mr. Kelly's attorney without any basis and without confirming the matter with Mr. Kelly, (ii) sharing confidences about Mr. Kelly's case with Mr. Kaplan, (iii) refusing to speak to Mr. Kelly about his own case (including refusing to advise Mr. Kelly if he were a target in the case), (iv) delivering the Staff's early 2014 settlement offer with respect to Mr. Kelly not to Mr. Kelly but to Mr. Kaplan (who to no one's surprise passed it on to Mr. Kelly's employer, an adverse party), (v) delivering transcripts of Mr. Kelly's confidential voicemail messages to the Staff to Mr. Kaplan (who to no one's surprise passed them on to Mr. Kelly's employer) in breach of the understanding between Mr. Kelly and the Staff to keep the communications confidential, and (vi) delivering a Wells Notice to Mr. Kelly prior to any substantive discussions with Mr. Kelly.
- Directly as a result of the Staff's actions Mr. Kelly lost (i) his salary, (i) his $50,000 bonus, (iii) his attorney, and (iv) his indemnification. Mr. Kelly, who has two children in college, had earmarked his $50,000 bonus for the payment of Georgetown and Tulane tuitions. Mr. Kelly has suffered significant hardship as a result of the Staff's actions, which have also been highly prejudicial to Mr. Kelly's pursuit of justice. The Staff's actions deprived Mr. Kelly of the opportunity to handle this matter independent of parties adverse to him.
- The Staff's actions violated SEC policy and New York ethics rules.
- The loss of indemnification has hampered Mr. Kelly's ability to defend himself.
- The loss of salary and bonus has hampered Mr. Kelly's ability to defend himself.

For the reasons set forth above, Mr. Kelly respectfully requests that the Court grant his Motion for Summary Disposition, and enter an order granting such relief:

Dated: January 14, 2015

Respectfully submitted,



[redacted]

SANDS BROTHERS ASSET MANAGEMENT LLC

ANNUAL
ACKNOWLEDGEMENT AND AGREEMENT TO ABIDE BY COMPLIANCE POLICIES AND PROCEDURES

The undersigned employee, agent or other person associated with SANDS BROTHERS ASSET MANAGEMENT LLC, a New York limited liability company (the "Firm"), hereby acknowledges, certifies, represents, warrants, and agrees as follows:

1. The undersigned has received a copy of the Firm's Compliance Policies and Procedures Manual (the "**Manual**"), which includes, among other provisions:

   a. the Firm's Privacy Policy;

   b. the Firm's Code of Ethics;

   c. the Firm's Personal Account Trading Policy;

   d. The Firm's Policy to Detect and Prevent Violations of SEC Rule 10b5-1;

   e. The Firm's Trading Practices/Brokerage Policies and Procedures;

   f. The Firm's Whistleblower Policy; and

   g. The Firm's Business Continuity Plan Disclosure Statement.

2. The undersigned has read and understands the information contained in the Manual, and is aware of all laws, rules and regulations applicable to the undersigned, and undertakes to continue to remain informed about all relevant compliance requirements.

3. The undersigned has since the date of employment of the undersigned, and will continue to, abide by: (i) all rules, restrictions, policies and procedures described in the Manual (as amended from time to time); and (ii) all laws, rules and regulations applicable to the undersigned (as amended from time to time), whether in connection with the activities of the undersigned on behalf of the Firm or otherwise.

4. In particular, the undersigned has not since the date of employment accepted any benefit from a client or person who does business with the Firm, other than business courtesies and non-cash gifts of nominal value (i.e., de minimis gifts, which are usually defined as having a value under $100.00).

5. The undersigned understands that any violation of the Firm's compliance policies and procedures by the undersigned may lead to sanctions, including the termination of the undersigned's employment with the Firm or other dismissal.

6. The undersigned understands that the Firm has established a strong culture of compliance with the compliance policies and procedures of the Firm as set forth in the Manual and otherwise and with all applicable laws, rules and regulations and high ethical business standards, and the undersigned has since the date of employment of the undersigned, and will continue to, contribute in a positive way to the Firm's strong culture of compliance.

In particular, the undersigned will:

(i) act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets;

(ii) place the integrity of the investment profession and the interests of clients above the undersigned's own personal interests;

(ii) use reasonable care and exercise independent professional judgment when conducting investment analyses, making investment recommendations, taking investment actions, and engaging in other professional activities;

(iv) practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession;

(v) promote the integrity of, and uphold the rules governing, capital markets; and

(vi) maintain and improve the undersigned's professional competence and strive to maintain and improve the competence of other investment professionals.

7. The undersigned has since the date of employment of the undersigned reported, and will continue to report, to the Managers and/or Chief Compliance Officer of the Firm, all violations known to the undersigned of the Firm's compliance policies and procedures.

8. To the extent the undersigned has specific duties and responsibilities in the Manual, the undersigned has, since the date such duties and responsibilities were provided for, diligently carried out, and will continue to diligently carry out, such duties and responsibilities.

9. I confirm attendance at the Annual Compliance and Training Meeting held in the offices of the Firm on April 6, 2011.

Name: Marie Sands

4/6/11
Date

SANDS BROTHERS ASSET MANAGEMENT LLC

ANNUAL
ACKNOWLEDGEMENT AND AGREEMENT TO ABIDE BY COMPLIANCE POLICIES AND PROCEDURES

The undersigned employee, agent or other person associated with SANDS BROTHERS ASSET MANAGEMENT LLC, a New York limited liability company (the "Firm"), hereby acknowledges, certifies, represents, warrants, and agrees as follows:

1. The undersigned has received a copy of the Firm's Compliance Policies and Procedures Manual (the "**Manual**"), which includes, among other provisions:

   a. the Firm's Privacy Policy;

   b. the Firm's Code of Ethics;

   c. the Firm's Personal Account Trading Policy;

   d. The Firm's Policy to Detect and Prevent Violations of SEC Rule 10b5-1;

   e. The Firm's Trading Practices/Brokerage Policies and Procedures;

   f. The Firm's Whistleblower Policy; and

   g. The Firm's Business Continuity Plan Disclosure Statement.

2. The undersigned has read and understands the information contained in the Manual, and is aware of all laws, rules and regulations applicable to the undersigned, and undertakes to continue to remain informed about all relevant compliance requirements.

3. The undersigned has since the date of employment of the undersigned, and will continue to, abide by: (i) all rules, restrictions, policies and procedures described in the Manual (as amended from time to time); and (ii) all laws, rules and regulations applicable to the undersigned (as amended from time to time), whether in connection with the activities of the undersigned on behalf of the Firm or otherwise.

4. In particular, the undersigned has not since the date of employment accepted any benefit from a client or person who does business with the Firm, other than business courtesies and non-cash gifts of nominal value (i.e., de minimis gifts, which are usually defined as having a value under $100.00).

5. The undersigned understands that any violation of the Firm's compliance policies and procedures by the undersigned may lead to sanctions, including the termination of the undersigned's employment with the Firm or other dismissal.

6. The undersigned understands that the Firm has established a strong culture of compliance with the compliance policies and procedures of the Firm as set forth in the Manual and otherwise and with all applicable laws, rules and regulations and high ethical business standards, and the undersigned has since the date of employment of the undersigned, and will continue to, contribute in a positive way to the Firm's strong culture of compliance.

   In particular, the undersigned will:

   (i) act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets;

   (ii) place the integrity of the investment profession and the interests of clients above the undersigned's own personal interests;

   (ii) use reasonable care and exercise independent professional judgment when conducting investment analyses, making investment recommendations, taking investment actions, and engaging in other professional activities;

   (iv) practice and encourage others to practice in a professional and ethical manner that will reflect credit on themselves and the profession;

   (v) promote the integrity of, and uphold the rules governing, capital markets; and

   (vi) maintain and improve the undersigned's professional competence and strive to maintain and improve the competence of other investment professionals.

7. The undersigned has since the date of employment of the undersigned reported, and will continue to report, to the Managers and/or Chief Compliance Officer of the Firm, all violations known to the undersigned of the Firm's compliance policies and procedures.

8. To the extent the undersigned has specific duties and responsibilities in the Manual, the undersigned has, since the date such duties and responsibilities were provided for, diligently carried out, and will continue to diligently carry out, such duties and responsibilities.

9. I confirm attendance at the Annual Compliance and Training Meeting held in the offices of the Firm on April __, 2011.

Name: STEVEN SANDS

4/6/11
Date

short-form Schedule 13G, and, instead, be required to file the more onerous Schedule 13D, or may voluntarily file a Schedule 13D.

The **Chief Compliance Officer**, together with a **Manager**, shall be responsible for 13(d) and 13(g) filings.

2. **Reports Pursuant to Section 13(f).** If the Firm exercises investment discretion with respect to accounts having in the aggregate more than $100 million of exchange-traded or Nasdaq-quoted equity securities on the last trading day of any calendar month of any calendar year, the Firm must file a Form 13F with the SEC within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year. The **Chief Compliance Officer** shall be responsible for 13(f) filings.

SECTION III

CODE OF ETHICS

A. Introduction. [See Rule 204A-1 adopted under the Advisers Act.] The Firm's code of ethics (the "Code of Ethics") as set forth below is designed to ensure that all Firm employees are aware of and adhere to the policies and procedures of the Firm. Maintaining a spirit of openness, honesty and integrity are of paramount importance at the Firm. The Firm believes that its employees should feel comfortable expressing their opinions and should be vigilant about alerting the **Chief Compliance Officer** and the **Managers** of anything they deem amiss, whether actual or potential, with respect to the Firm's business, operations or compliance. As evidence of the Firm's commitment to operating with integrity, the Firm has adopted this Code of Ethics, which shall be amended from time to time. The purpose of this Code of Ethics is to identify the ethical and legal framework in which the Firm and its employees are required to operate and to highlight some of the guiding principles and mechanisms for upholding the Firm's standard of business conduct, as set forth below. Employees will be required to acknowledge receipt of the Code of Ethics by executing the Acknowledgement and Agreement to Abide by Compliance Policies and Procedures attached to this Manual as Exhibit A.

B. Standard of Business Conduct. It is the responsibility of all employees to ensure that the Firm conducts its business with the highest level of ethical standards and in keeping with its fiduciary duties to the Firm's clients. Employees have a duty to place the interests of the Firm's clients first, and to refrain from having outside interests that conflict with the interests of its clients. To this end, employees are required to maintain the following standards:

1. Compliance with all Covered Laws, including, but not limited to, federal securities laws;

2. Compliance with the Firm's compliance policies and procedures, as shall be updated from time to time;

3. Honest and fair dealings with clients;

WHAT ATTITUDE SHOULD WE HAVE ABOUT COMPLIANCE. I BELIEVE WE SHOULD BE RELENTLESSLY COMPLIANT. COMPLIANCE DOESN'T COST MUCH, BUT NONCOMPLIANCE CAN BE VERY COSTLY, NOT JUST VIS A VIS REGULATORS, BUT JUST AS IMPORTANTLY VIS A VIS POTENTIAL INVESTORS

AND ONE MISCONCEPTION ABOUT COMPLIANCE, THE CCO IS NOT IN CHARGE OF YOUR COMPLIANCE. EVERYBODY HERE IS IN CHARGE OF YOUR OWN COMPLIANCE. I WILL PROVIDE THE RIGHT GUIDANCE, AND THE COMPLIANCE MANUAL WILL TELL YOU EXACTLY HOW TO CONDUCT YOURSELF, AND IT IS YOUR RESPONSIBILITY TO ACT ACCORDINGLY

EVERYBODY HAS AN ANNUAL ACKNOWLEDGMENT FORM WHICH IS REQUIRED TO BE EXECUTED AT SOME POINT AFTER THIS MEETING. PLEASE DO SO AND GET THE EXECUTED ACKNOWLEDGMENTS BACK TO ME.

EVERYBODY SHOULD HAVE A COPY OF THE DRAFT COMPLIANCE MANUAL. I WILL GO THROUGH IT, HIGHLIGHTING SOME OF THE MORE IMPORTANT PROVISIONS.

[THRU COMPLIANCE MANUAL]

MONITORING EMAILS

MONITORING COMPUTER USAGE

SEC ANTI-FRAUD RULES

health care, business services, finance, and transportation. These funds are currently closed to new investors.

The Venture Funds pay SBAM a quarterly advisory fee based upon assets under management. In addition, affiliates of SBAM which are member-managers of the Venture Funds may receive an annual performance allocation, subject to the performance of the funds. The executive officers of SBAM also serve as the managers of the entities which are the member-managers. The Venture Funds are structured to require long-term investment by investors in those funds.

The Venture Funds are Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, 280 Ventures LLC, Granite Associates LLC, and Katie and Adam Bridge Partners, L.P..

4. Vantage Point Fund

The Vantage Point Fund was organized in 2009 and commenced operations in March 2009. The Vantage Point Fund invests primarily in high yield and distressed debt. The Vantage Point Fund will pay to SBAM a monthly management fee equal to 2% annually, and, subject to performance, will make a 20% annual performance allocation to the general partner of the Vantage Point Fund, which is owned by related persons of SBAM, subject to a high water mark. The Vantage Point Fund will charge an operational fee (in addition to the monthly management fee) equal to the greater of (i) approximately 0.000667% (1/15 of 1% monthly) of the net assets of the Vantage Point Fund or (ii) $10,416.66 per month ($125,000 annually).

5. SBAM Personnel

Martin and Steven Sands are the co-founders of the Firm and are the Senior Portfolio Managers. They have ultimate responsibility for the management of the funds which SBAM manages. Christopher Kelly is the Chief Compliance officer and Chief Operating Officer. He is responsible for the Firm's compliance and he is responsible for operations which do not involve investment decision-making.

There are three Portfolio Managers who have more direct responsibility for management of the funds of the Firm's clients. Brian Cloonan manages the Venture Funds, Tim Doede manages the asset based lending funds, and Dan Libby manages the Select funds, which are funds of funds, and he also manages the Vantage Fund which is a distressed fund.

Only the Vantage Point Fund and the Genesis Funds currently take new investors.

Theresa Bildt is the Executive Assistant and Office Manager. She has significant ministerial compliance responsibility. Brian Cloonan is an Analyst who manages the Venture Funds. There are two drivers who are employed by the Firm, John Antonetti and Claude Maynard, Sr. In addition Anita Sands, Martin and Steven Sands' mother, is employed as a consultant by the Firm and Hugh Marasa is Director of Marketing. He is a

V

6. Trading

The Firm does little trading for its clients; it has few positions with significant liquidity. Trades in the Venture Funds, the Venture Funds, and the Vantage Point Fund are executed with the registered broker-dealer, Laidlaw & Co. Laidlaw may be deemed to be an affiliate of the Firm based on related ownership. As the Firm's Portfolio Managers are required to secure best execution for its clients, Laidlaw's discounted charges generally make it the best selection for these trades. The Firm does not trade for the Select Funds. The Venture Funds and the Genesis Funds have few trades

7. Statements and Subscription Agreements

Depending on the requirements of the individual Offering Memorandum, the Firm provides the investors in its client funds reports on a monthly or a quarterly basis. As all of the clients became investors through private offerings of securities in the various funds, I reviewed a sampling of subscription agreements for completeness and to insure that they existed and are readily available.

8. Custody

SBAM takes the positions that it has custody of its clients' assets as it has custody of some securities; however, it is not subject to the SEC's surprise audit rule for brokers with custody. It provides monthly or quarterly reports to its fund investors as well as sending its audits to them. The audits are done by PCAOB accountants. SBAM is not subject to the SEC's surprise audit rules based on custody.

9. Regulatory examinations and orders

In October 2010 SBAM, Martin Sands, and Steven Sands settled administrative proceedings with the United States Securities and Exchange Commission ("SEC"). The SEC alleged violations of Sections 204 and 207 of the Investment Adviser's Act of 1940 and Rules 204-1 and 204-2, promulgated under that Act, relating to books and records and Form ADV. This matter arose as a result of a 2004 inspection of SBAM by the SEC. Prior to the notice of an intention to charge SBAM with violations neither SBAM nor Martin or Steven Sands had received any communication from the SEC since 2005. In settlement, the parties agreed to cease and desist from violations of the law and rules, agreed to be censured, and agreed to pay a $60,000 fine.

During the early part of 2010 SBAM provided 59,000 pages of documents to the SEC.

III. Compliance Manual

The Firm undertook a complete rewrite of the Compliance Manual in 2008 and has used this new Manual since May 2008. It changed its prior generic manual into one that deals with the specific issues facing the Firm on a day-to-day basis. The Compliance Manual is updated as necessary. Its last update occurred on June 4, 2010.

Given the small staff and comparatively small amount of transactions undertaken by the staff, the Manual has been adapted to reflect the actual amount of compliance personnel with a specific designation of which person is in charge of which operation and who reports to whom.

J. Develop and implement written business continuity plan along with the Chief Compliance Officer and Managers.

The Executive Assistant does participate in the updating of this plan and concentrates on the data processing function and on the updating of information.

K. The Executive Assistant maintains the books and records required by Exhibit B to the manual.

The Executive Assistant has a role but is not solely responsible.

L. Regulatory issues

1. The SEC made two discrete inquiries into SBAM activates.

a. January 2008 transaction involving the Sands Brothers Venture Capital III, LLC and Sands Brothers Venture Capital IV, LLC funds advised by the Firm and Triage Partners, LLC, an entity not advised by the Firm. The Firm has provided the SEC with the requested information.

b. The SEC inquired as to the timing of the distribution of the audited financial statements for funds advised by the Firm. No additional inquiry was made after the initial one. The Firm has provided the SEC with the requested information.

2. The Connecticut Banking Department inquired about filings for exemption of the Firm's funds, an apparent inconsistency for the state of residence on the Firm's website for Hugh Marasa, and a question about disclosure of a Board decision on the Form U-4 for Steven and Martin Sands. The Firm responded with proof of filings, with a change in the website disclosure to reflect Mr. Marasa's new residence, and explained that the Sands brothers are no longer registered, among other items, and do not have a disclosure requirement.

IV. Specific Recommendations

Given the periodic review of the Compliance Manual to keep it current, the small size of the Firm, the few employees, and the ability of the Chief Compliance Officer to review each transaction and to speak to each employee of the Firm immediately, the compliance system at the Firm functions well. It is uniquely dependent on the skill of the Chief Compliance Officer. While there are built in back-ups for some of his functions, the Firm relies on the ability of Christopher Kelly to perform these functions.

While the Compliance Manual reflects the roles of the administrators in the compliance process that disclosure should be confirmed.

Generally, the Firm's compliance system functions well to prevent reporting and disclosure violations and to insure that information is retained and distributed as necessary. Should Christopher Kelly or Eva Shafer leave the Firm, the Senior Portfolio Managers would be required to find individuals with their skills to perform all of the functions that they perform to insure that the compliance system continues to operate effectively. Substantially all of the

VII

SANDS BROTHERS ASSET MANAGEMENT
15 Valley Drive
Greenwich, CT 06831

December 5, 2012

VIA FEDERAL EXPRESS

Eric Wilder, Director
Securities and Business Investments Division
Connecticut Banking Department
260 Constitution Plaza
Hartford, Connecticut 06103

Re: ***Sands Brothers Asset Management, LLC ("SBAM")***

Dear Mr. Wilder:

I attach the Litigation Report and Implementation Report as required by the September 9, 2009 order of the Banking Commissioner.

Very truly yours,

Christopher Kelly

Enclosures

LITIGATION REPORT

OF

SANDS BROTHERS ASSET MANAGEMENT LLC (the "Company")

TO

DIVISION DIRECTOR

Pursuant to Section 2(iii) of the Stipulation and Agreement dated September 9, 2009

(the "Stipulation and Agreement")

FOURTH COMPLIANCE REVIEW (POST "THIRD" REVIEW)

Inclusion of any information herein does not constitute a representation that such information is required to be included herein by the terms of the Stipulation and Agreement.

1. The Securities and Exchange Commission (the "SEC") has made inquiries regarding a transaction in January 2008 involving Sands Brothers Venture Capital III, LLC and Sands Brothers Venture Capital IV, LLC, funds advised by the Company, and Triage Partners, LLC, an entity not advised by the Company. The Company has provided the SEC with the requested information.
2. The SEC has made inquiries regarding the timing of the distribution of audited financials of funds advised by the Company. The Company has provided the SEC with the requested information.
3. Representatives of the Connecticut Department of Banking (the "Department") performed an onsite visit to the Company to review records during early 2012, and provided the Company with various comments. The Company addressed the comments of the Department.

The undersigned hereby affirms the foregoing as of the 5th day of December 2012.

Christopher Kelly
Chief Compliance Officer

VIII

Sands Bros
SANDS BROTHERS ASSET MANAGEMENT

Via Overnight Courier

April 1, 2009

Mr. Anthony P. Fiduccia, CFA
Branch Chief
United States
Securities and Exchange Commission
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281-1022

Re: Examination of Sands Brothers Asset Management, LLC ("SBAM" or the "Adviser")
January 16, 2009 (Amended on January 20, 2009) Formal Request List ("Third Additional Request")

Dear Mr. Fiduccia:

This letter represents SBAM's second response to the Third Additional Request. For your convenience SBAM has reproduced the relevant requests below, and has provided its responses. As indicated, certain responses may be provided at a later date. To the extent that any responses require any additions or revisions, SBAM will provide that material to you as soon as practicable.

Certain defined terms herein are used as defined in SBAM's letter to you dated January 5, 2009 in response to your letter to SBAM dated December 23, 2008.

2. *Please provide the investment advisory agreements for the following entities:*

a. VC III

PREVIOUSLY PROVIDED

b. Granite

TO BE PROVIDED, IF APPLICABLE

c. SA Institutional

PREVIOUSLY PROVIDED

d. K&A

TO BE PROVIDED, IF APPLICABLE

e. Genesis

PREVIOUSLY PROVIDED

3. Please provide all documentation supporting the resolution of the complaints contained in the complaint file provided to the staff.

Magenet Uno

PREVIOUSLY PROVIDED

Thominvest Oy

TO BE PROVIDED

9. The staff was informed that SBAM maintains certificates of ownership of certain investments (stock certificates) at its principal location. Please inform the staff of the following with regards to this practice:

a. Provide a list of all securities and/or stock certificates that are maintained at SBAM's office;
b. Inform the staff, in writing, the manner in which the securities and/or stock certificates are maintained at SBAM;
c. Please inform the staff of SBAM's future plans regarding the securities and/or stock certificates maintained at its office.

See attached hereto.

We understand all of such securities and/or stock certificates to be privately offered securities.

Very truly yours,

Christopher Kelly
Chief Compliance Officer
Sands Brothers Asset Management, LLC
ckelly@sandsbros.com
917 940-9401

Attachments

cc: Martin S. Sands
Steven B. Sands
K. Daniel Libby
Scott Baily
Tim Doede
Douglas Bisio

9. The staff was informed that SBAM maintains certificates of ownership of certain investments (stock certificates) at its principal location. Please inform the staff of the following with regards to this practice:

a. Provide a list of all securities and/or stock certificates that are maintained at SBAM's (SBVC Funds) office;

Answer: Please see attached document.

b. Inform the staff, in writing, the manner in which the securities and/or stock certificates are maintained at SBAM (SBVC Funds);

Answer: The securities and/or stock certificates for the Venture Funds are maintained in files behind locked doors.

c. Please inform the staff of SBAM's (SBVC Funds) future plans regarding the securities and/or stock certificates maintained at its office.

Answer: Although we are continuing to search for a qualified custodian for our securities and/or stock certificates, in the absence of finding a custodian we expect to maintain the securities and/or stock certificates in the same manner.

IX

FORM ADV

OMB: [redacted]

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: SANDS BROTHERS ASSET MANAGEMENT LLC	IARD/CRD Number: [redacted]
	Rev. 10/2012

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

A. (1) Do you have *custody* of any advisory *clients'*: **Yes No**

(a) cash or bank accounts? (●) ( )

(b) securities? (●) ( )

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have *custody* solely because (i) you deduct your advisory fees directly from your *clients'* accounts, or (ii) a *related person* has custody of *client* assets in connection with advisory services you provide to *clients*, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-(2)(d)(5)) from the *related person*.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $ 51,580,356	(b) 14

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your *clients'* accounts, do not include the amount of those assets and the number of those *clients* in your response to Item 9.A.(2). If your related person has custody of *client* assets in connection with advisory services you provide to *clients*, do not include the amount of those assets and number of those *clients* in your response to 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*: **Yes No**

(a) cash or bank accounts? ( ) (●)

(b) securities? ( ) (●)

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount	Total Number of *Clients*
(a) $	(b)

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

(1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage. ☐

(2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools. ☑

(3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities. ☐

(4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities. ☐

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the *private funds* you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

	Yes	**No**
(1) you act as a qualified custodian	○	◉
(2) your *related person(s)* act as qualified custodian(s)	○	◉

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced:

F. If you or your *related persons* have *custody* of *client* funds or securities, how many persons, including, but not limited to, you and your *related persons,* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients?*

2

Next Previous