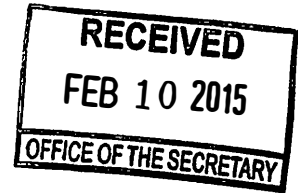


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



**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 OPPOSITION ("OPPOSITION") TO THE DIVISION OF  
ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

**Introduction**

The Division of Enforcement (the "Division") shows right off the bat in its Motion for Summary Disposition (the "Division's Motion for Summary Disposition" or its "Motion") that its understanding of Rule 206(4)-2 (the "Custody Rule") is deeply flawed.

The Division states on page 1 of its Motion that SBAM violated the Custody Rule "by delivering its funds' audited financial statements to investors more than 120 days after the end of each fund's fiscal year." The Division states in the first sentence of page 10 that "SBAM had to circulate audited financial statements by April 30, 2011 to satisfy the audit-exception to the Custody Rule for 2010." These statements are legal conclusions and are not accurate.

## Discussion

*The 120 Day Provision as Defined by the SEC.* The Securities and Exchange Commission (the “SEC”) does not found its Custody Rule enforcement actions implicating the 120 day provision (the “120 Day Provision”) solely on the 120 Day Provision as baldly set forth in Rule 206(4)-2. If that were the case, then the SEC would be initiating enforcement actions against many hundreds of other advisors that deliver their fund audits beyond the 120 day period. Specifically, the SEC does not go after fund-of-funds that deliver audits after the 120-day period.

There are many hundreds of fund-of-funds, and to the knowledge of Mr. Kelly the SEC has never initiated an enforcement action against a fund-of-fund because of a violation of the 120 Day Provision of the Custody Rule. An example of this is easily rendered. SBAM itself manages fund-of-funds. The Division notes exactly that on page 2 of its Motion, in subparagraph (iii) of sentence two where it mentions SBAM’s “fund of funds.” The Division is aware, and Mr. Kelly will stipulate, that the audits for the SBAM fund-of-funds have not been delivered within the 120-day period.

Yet, as the Division so clearly and unequivocally puts it at footnote 4 at page 2, “they” - the fund-of-funds - “are not at issue here.” In other words, the Division is giving the fund-of-funds a pass on adherence to the bald language of Rule 206(4)-2. Funds do not “violate” the Custody Rule by the mere failure to meet the 120 Day Provision. If that were true the Division would not have concluded that the SBAM fund-of-funds “are not at issue.” There has to be something else.

In the matter at hand, that something else is what Mr. Kelly referred to as the “Q&A Exemption” in his Motion for Summary Disposition (“Motion”). The Q&A Exemption (as more

fully explained in Mr. Kelly's Motion) 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 (in any respect), 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."

The Staff's assertion in the first full paragraph on page 6 that "Notwithstanding the 2010 Order, and SBAM's and the Sands' consent to its entry, SBAM continued to violate the Custody Rule" is nothing but an unsupported legal conclusion. The Staff's assertion in the same paragraph that "none of the Respondents did anything to ensure that it did not" is not true. THE DIVISION PROVIDES NO CITATION FOR THIS SENTENCE.

Even though Mr. Kelly has no particular training in the audit function, he worked to the extent he could be helpful to move the audit process forward. This work included helping to set up audit launch meeting with the auditors, meetings that Martin Sands and Steven Sands did not attend, despite being invited. This work was also on top of Mr. Kelly reminding Martin Sands and Steven Sands, and the other players in the audit process including the auditors, of the importance of the 120 Day Rule, something Mr. Kelly did regularly from 2008. Other aspects of Mr. Kelly's significant efforts are set forth in his Motion.

Page 6 of the Division's Motion states in the second full paragraph that "Within seven months of the 2010 Order, the firm again violated the Custody Rule. Its non-compliance continued for three years." These statements are unsupported legal conclusions. Nowhere in these statements (and elsewhere where the Division asserts legal conclusions) does the Division discuss the clear applicability of the Q&A Exemption *or other relevant factors cited by Mr. Kelly in his Motion.*

*Actions of Martin Sands.* On pages 10 and 11 of the Division’s Motion, the Division notes that Martin Sands refused to sign representation letters that would have allowed the release of audits within the 120-day period. The Division’s recounting of the events surrounding Martin Sands’ actions are true, and represents misbehavior by Mr. Sands in connection with the Custody Rule. While Martin Sands’ actions do not change the applicability of the Q&A Exemption, which relates to a much earlier period in the audit process, or other relevant factors, Martin Sands’ actions do represent an independent affront to the Custody Rule.

*Representation Letters.* The Division states in the second paragraph of page 14 that the audit representation letters –standard letters signed by every management team involved in an audit – provide that “management – and not the auditors – ‘are responsible for the preparation and fair presentation of the financial statements.’” Auditors do not inspect every penny of the financial records, but “audit” the financial statements by relying on bookkeeping and administrator financial reports underlying the financials. The boilerplate language is an attempt by auditors to project fault back onto the company and away from the auditors.

The language has nothing to do with the timing of the audits, and in fact the language says nothing whatsoever about the timing of the audits. The language also does not use the word audit because the language is referring to financial statements, not the *audited* financial statements, which of course the auditors have responsibility for, and to a large extent control the timing of.

*Control of the Audits.* The Division states in the first full paragraph of page 15 that “the Sands and Kelly, either acting on their own or through SBAM employees and agents, controlled the audits.” THE DIVISION PROVIDES NO CITATION FOR THIS PROPOSITION. See the paragraph above in addition to the discussion following.

It is unclear what the Division means by “controlled,” which is a legal term. In any case, to say that Mr. Kelly “controlled” the audits is a gross misreading of reality. Mr. Kelly, a non-financial professional, working for highly experienced financial professionals Martin and Steven Sands, most certainly did not “control” the audits in any fair meaning of the term. The Division provides not a shred of evidence. The Division cites Mr. Kelly signing audit engagement letters, but he did so as a signatory, and because Martin and Steven Sands refused to do so. Mr. Kelly acted responsibly in signing the engagement letters so the audits would get started. Mr. Kelly should be praised for this act, and there is no basis for using it against him. Signing an engagement letter of course has nothing to do with audit “control.” The letters merely set out the terms of the audit. There is nothing in the engagement letters regarding control, and nothing that bears on the timing of the audits.

The Division goes on to say that Mr. Kelly signed representation letters. Mr. Kelly signed the representation letters because he was acting responsibly in connection with the audit process. In any case signing a representation letter has nothing to do with “controlling” the audit.

As noted, Mr. Kelly did participate in the audits to the extent he could be helpful, and he is proud of his efforts in this regard. Mr. Kelly acted responsibly in this regard, but his assistance did not denote “control”. The idea that a non-financial officer would “control” an audit just because he assists in the audit effort makes no sense and should be disregarded. See also Attachment II to the Affidavit accompanying this Opposition, which sets forth some of the persons involved in the audit process.

It is not the case that all unsupported assertions by the Division have to be taken as true, or taken into account. Asserting that Mr. Kelly “controlled” the audits is no different than asserting that Hugh Marasa, the Director of Marketing for SBAM, controlled the audits. Mr.

Marasa also helped out with the audits, sometimes significantly, as did virtually everybody at SBAM, but Mr. Marasa no more “controlled” the audits than Mr. Kelly did.

Martin Sands and Steven Sands, however, two highly experienced financial professionals, were Co-Founders, Co-Partners, Co-Chief Executive Officers and Co-Senior Portfolio Managers of SBAM, and accordingly were both in charge of SBAM, and ultimately in charge of the audits. See Attachment IV to the Affidavit accompanying this Opposition.

*The Cornick Garber Letter.* The Cornick Garber Sandler LLP (“Cornick”) letter (the “Letter”) is cited on page 16 of the Division’s Motion. The Letter, containing unsupported generalities, was issued in September 2013, more than eight months after the end of 2012, the last year with respect to which audits were delivered after the 120-day period, and after Cornick received subpoenas relating to its role in the audits. Cornick had not previously issued a comparable letter. After Cornick issued the Letter, SBAM’s 2013 audits were delivered within the 120-day period

*Compliance Manual.* In the fourth paragraph of page 23 the Division cites the SBAM Compliance Manual, which is an internal SBAM document, not a statute or regulation. It is unclear how a Compliance Manual can be “violated”, and in any case the Respondents have not been charged with “violating” the Compliance Manual.

The language cited regarding “ensuring compliance” is stock Compliance Manual language found in many Compliance Manuals and does not mean the Chief Compliance Officer is a guarantor of any particular result. Mr. Kelly managed the compliance program and established a compliance framework that was sufficient for SBAM personnel to remain compliant with the 120 Day Provision. The failure to deliver audits within the 120-day period was not the result of a deficient compliance program, as the program made it adamantly clear

what SBAM and Martin Sands and Steven Sands had to accomplish to comply with the 120 Day Provision. The fact that they could not deliver the audits within the 120-day period is not a reflection on the program as much as it is a reflection on those parties.

*Authority.* In the first full paragraph of page 24, and similarly in other places in the Division's Motion, the Division states that Mr. Kelly's role as Chief Operating Officer "gave him all the authority he needed to ensure that the firm satisfied the obligations under the Custody Rule."

The citations are to material from Richard Slavin, the SBAM compliance consultant, who was independent of SBAM, not a SBAM insider who might have a grasp of respective responsibilities among the staff. In any case Mr. Slavin was speaking of "operations", not financial matters, which would typically be handled by a CFO. Mr. Slavin does not anywhere use the term "financial", which would be expected if he were speaking of a financial function. Mr. Slavin also says nothing whatsoever about audits.

There is no basis for taking into account an assertion where the Division fundamentally misunderstood what was being said by the Division's own source, and where the assertion makes no sense.

In SBAM's case, SBAM outsourced the CFO/financial function to Greenwich Fund Services ("GFS"), which was paid for providing those services (see Attachment 1 to the Affidavit and Exhibits 19 and 20 to the Division's Motion (in such Exhibits the GFS President attests to GFS's role with SBAM and the SBAM Funds)). So the citations by the Division provide no support for the assertion that Mr. Kelly had sufficient authority as Chief Operating Officer to conduct a financial function. The citations merely state that Mr. Kelly handled operational matters as Chief Operating Officer.

Astonishingly, the Division states on page 24 at the beginning of the second full paragraph that “Kelly was responsible for the audits.” THE DIVISION PROVIDES NO CITATION FOR THIS SENTENCE. This assertion is irresponsible in the extreme. Based on what? An email? A resolution? An employment contract? There are no emails, resolutions or employment contracts that make Mr. Kelly responsible for the audits, and Mr. Kelly was certainly never told he was responsible for the audits. Making Mr. Kelly responsible for the audits would have defied common sense, and to their credit, Martin Sands and Steven Sands did not make Mr. Kelly, who would have been entirely unqualified, “responsible for the audits.”

Noting that Mr. Kelly was aware of things related to the audits does not make him “responsible for the audits.” All of the professionals at SBAM were aware of what was going on with the audits. Does that make everybody at SBAM “responsible for the audits.”?

As noted elsewhere Mr. Kelly has no particular financial training; hence the outsourcing to GFS. Martin Sands and Steven Sands were highly experienced financial professionals. They managed SBAM as Co-Founders, Co-Partners, Co-Chief Executive Officers and Co-Senior Portfolio Managers, and were ultimately responsible for financial matters, including the audits.

*Encouragement.* The first paragraph of page 25 is impressive in its irresponsibility. The last sentence of the paragraph states that “Kelly appears to have believed that his encouragement of others at SBAM to meet the deadline would suffice to satisfy his responsibilities as the firm’s COO and CCO.” At least the Division uses the word “appears,” denoting that the Division is very uncomfortable making such an outrageous claim, as it should be. Encouragement was present to be sure, from 2008, but Mr. Kelly also dove headlong into the audit process offering hands-on assistance to the extent he could be helpful, even though he has no particular training or experience for the audit process, and even though the audit process itself was a financial



function. (Mr. Kelly of course managed the compliance program itself, which is separate from the audit program.) The Division's Motion itself notes many things Mr. Kelly did affirmatively in connection with the audits.

Also, in particular, Mr. Kelly was involved in setting up meetings with the auditors earlier in the process (the Division's claim to the contrary is not true, with such claim being particularly disappointing because the Division Staff knows about the meetings). As noted elsewhere, Mr. Kelly, a non-financial professional, attended the meetings, while Martin Sands and Steven Sands did not. Mr. Kelly reviewed draft valuations, obtained data from portfolio companies, did math, communicated with the auditors and administrators, explained audit-relevant matters to SBAM personnel, spoke to attorneys and did many other things in the course of the audits, many on his own initiative. Mr. Kelly's efforts were significant and meaningful to the process, but despite the many steps he took to support the audit process, he was never in a position to control the timeliness of the audits, which involved multiple personnel and firms. See also Attachment II to the Affidavit accompanying this Opposition.

*Control.* In the first carryover paragraph on page 26 the Division states, referring to Martin Sands, Steven Sands and Mr. Kelly that "they controlled the entity." THE DIVISION PROVIDES NO CITATION FOR THIS PROPOSITION. Mr. Kelly may be deemed a "controlling person" for certain narrowly defined purposes, such as for a Form ADV, but that is a far cry from actually "controlling" SBAM. In fact it is completely different. Martin and Steven Sands controlled SBAM, and that should be evident from their multiple senior positions in the firm, the ownership of the firm by Sands family trusts, and their wielding of authority. It was the Sands who hired personnel, who determined compensation, who managed assignments, and

relevant to this matter, who ultimately controlled the audit process. See also Attachment IV to the Affidavit accompanying this Opposition.

Mr. Kelly's most recent salary was \$125,000, as set by Martin Sands and Steven Sands. If Mr. Kelly had any control over SBAM his salary would have been in excess of that. Mr. Kelly has not been paid since May 15, 2014, a decision made by Martin Sands and Steven Sands. If Mr. Kelly had any control over SBAM he would have been paid his salary. Martin Sands and Steven Sands have denied Mr. Kelly the indemnification to which he is entitled from SBAM and the SBAM Funds. If Mr. Kelly had any control over SBAM he would have continued to receive indemnification (Martin Sands and Steven Sands continue to indemnify themselves, which they are able to do because they control SBAM). Mr. Kelly was promised a \$50,000 bonus for his work in 2013. If Mr. Kelly had any control over SBAM that bonus would have been paid (Martin Sands and Steven Sands, taking advantage of their control positions at SBAM, have to date withheld the bonus).

Accordingly, it is misleading to state that Mr. Kelly "controlled the entity." Mr. Kelly managed the compliance program as CCO, and managed operations as COO. Particularly in the case of his COO role, he worked under and for Martin Sands and Steven Sands, the Co-Founders, Co-Partners, Co-Chief Executive Officers and Co-Senior Portfolio Managers of the firm. Further, as the Division points out on page 3 of its Motion, the Sands "families indirectly own SBAM as beneficiaries of the two trusts that are the sole members of SBAM LLC." Based on titles, authority and ownership, it is crystal clear who "controlled" SBAM for purposes of the audits (which is the relevant purpose).

*Knowledge.* The Division makes the point in a number of places that Mr. Kelly (and others) knew that the audits were delivered after the 120-day period. Of course SBAM personnel

knew about the delivery timeframe, but knowledge is not causation, and there is no violation tied to knowledge per se.

The knowledge is what drove Mr. Kelly to work so hard to support the audit process, including assisting SBAM personnel who had much more financial training than himself. But knowledge and work cannot guarantee results, as Mr. Kelly was just one person among many involved in the audit process. Most other parties, including Martin Sands, Steven Sands, the administrators, the Portfolio Managers and the auditors themselves (including internal audit committees) had much more influence on the timing of the audits than Mr. Kelly, a non-financial professional, ever could. See also Attachment II to the Affidavit.

*The SEC.* In the first paragraph of page 25 of the Division's Motion, the Division states that Mr. Kelly did not reach out to the SEC. While Mr. Kelly is not aware of any requirement to reach out to the SEC, so the relevance of this is unclear, this is misleading in a number of ways. Mr. Kelly managed distributions to the SEC of a large amount of SBAM material in early 2009 and again in 2010 (in the aggregate approaching 100,000 pages). The material, which the SEC has, included copies of the SBAM Fund audits. The Compliance Reports prepared by Mr. Slavin were also provided to the SEC from 2009 through 2012. After reviewing the Compliance Reports, which included an opinion of Mr. Slavin that no surprise audit was required, the SEC had no objections to, and any other comments on, the contents of the Compliance Reports.

The SEC has never, despite being aware of the audit delivery issue, provided Mr. Kelly with any specific advice on the audit process, or anything related to it. While Mr. Kelly was confident at the beginning of each audit that the audit would get done within the 120-day period, ultimately in each case issues arose that stood in the way of that goal.

Further, when Mr. Kelly did contact the SEC in early February of 2014, specifically to speak about audit matters, the Staff refused to speak to him substantively, including refusing to even advise him if he was a target.

### **Affidavit**

The Affidavit attached hereto is made a part hereof and incorporated by reference herein.

### **Conclusion**

Strip out the unsupported legal conclusions and bald assertions and one is left with audits that were not delivered within the 120-day period and a series of actions by Mr. Kelly in connection with the audits highlighted by the Division that were positives, not negatives.

Nowhere in the Division's Motion is there a shred of evidence that the Q&A Exemption was not available. Nowhere in the Motion does the Division acknowledge that it does not initiate enforcement actions relating to the 120 Day Provision based solely on the language of Rule 206(4)-2. If it did, the Division would have initiated hundreds of such actions against fund-of-funds, which regularly exceed the 120-day period for the delivery of audits, including SBAM's own fund-of-funds.

The Q&A Exemption is a fact, as is Mr. Kelly's reliance on counsel, as related in his Motion. Accordingly, even if everything in the Division's Motion is true, there is no basis whatsoever for a summary disposition based on the Division's demands.

The Division's Motion is in fact a roadmap for granting Mr. Kelly's Motion.

- Martin Sands and Steven Sands managed SBAM as the Co-Founders, Co-Partners, Co-Chief Executive Officers and Co-Senior Portfolio Managers/Mr. Kelly worked under and for Martin and Steven Sands as CCO and COO (Mr.

Kelly of course managed the compliance program, which is different from the audit program)

- SBAM is owned by Sands family trusts, which control SBAM/(Although promised) Mr. Kelly has never been granted any ownership in SBAM
- Martin Sands and Steven Sands have decades of experience as financial professionals, including working at well-known financial firms/Mr. Kelly has never served as a financial professional
- Martin Sands and Steven Sands have problematic regulatory records/Mr. Kelly has an unblemished regulatory record
- Martin Sands and Steven Sands were the subjects of the 2010 SEC Order/Mr. Kelly was not the subject of the 2010 SEC Order, which had its genesis in actions and inactions many years before Mr. Kelly was employed by SBAM
- Martin Sands was the subject of the Connecticut Stipulation and Agreement/Mr. Kelly was not the subject of such Agreement, which had its genesis in actions and inactions some years before Mr. Kelly was employed by SBAM
- Martin Sands refused to sign representation letters in connection with the audits/Mr. Kelly never refused to sign representation letters, which enabled the auditors to release the audits
- Martin Sands and Steven Sands refused to sign engagement letters in connection with the audits/Mr. Kelly never refused to sign engagement letters, which enabled the auditors to commence work on the audits
- Martin Sands and Steven Sands did not attend audit launch meetings/Mr. Kelly helped set up the meetings and attended them

- Steven Sands refused to pay audit bills timely/Mr. Kelly did not engage in such actions
- To Mr. Kelly's knowledge Martin Sands and Steven Sands have not personally reached out to the SEC to offer to answer any questions the SEC may have and to otherwise cooperate/Mr. Kelly personally reached out to the SEC in February 2014 (at Martin Sands' prompting) and offered to answer any questions the SEC may have and to otherwise cooperate

Accordingly, while one can point to specific actions of Martin Sands and Steven Sands that led to the delivery of audits outside the 120-day period, that is not the case with respect to Mr. Kelly. The Division's Motion in fact is a veritable showcase of actions taken by Mr. Kelly that supported the audit process, while it is clear from the Division's Motion that Martin Sands and Steven Sands took actions that had the opposite effect.

Now is the time to dispose of this matter as to Mr. Kelly. Based on the considerations present in this matter, as plainly set forth in Mr. Kelly's Motion, and this Opposition, including above all the lack of legal grounds for enforcement, the Division's Motion as to Mr. Kelly should be denied, and Mr. Kelly's Motion should be granted.

Dated: February 3, 2015

Respectfully submitted,

Christopher Kelly [REDACTED]  
[REDACTED]  
[REDACTED]

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SECURITIES AND EXCHANGE COMMISSION

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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16223**

**In the Matter of**  
**Sands Brothers Asset Management,**  
**LLC, Martin Sands, Steven Sands and**  
**Christopher Kelly**  
**Respondents,**

**AFFIDAVIT IN SUPPORT OF**  
**CHRISTOPHER KELLY'S**  
**OPPOSITION TO THE DIVISION'S**  
**MOTION FOR SUMMARY**  
**DISPOSITION**

-----X  
STATE OF *New York* )  
                                  ) ss.:  
COUNTY OF *Beacon* )

CHRISTOPHER KELLY, being duly sworn, deposes and says:

1. I have served as Chief Operating Officer and Chief Compliance Officer of Sands Brothers Asset Management, LLC ("SBAM"). I commenced employment with SBAM on April 28, 2008. I am familiar with SBAM's business and personnel. I submit this affidavit in support of Christopher Kelly's Opposition to the Division (the "Division") of Enforcement's Motion for Summary Disposition (the "Division's Motion for Summary Disposition"). The facts set forth herein are true to my personal knowledge.

2. As Chief Operating Officer I was not "in charge" of SBAM's financial function. SBAM's "financial", or "CFO"-type, function, to the extent not managed by Martin Sands and Steven Sands, was outsourced, at the direction of Martin Sands and Steven Sands, to Greenwich Fund Services ("GFS"). GFS provides consulting, bookkeeping and administrative services to various clients, including SBAM and each of the funds advised by SBAM (the "SBAM Funds"). See also Exhibits 19 and 20 to the Division's Motion for Summary Disposition.



3. GFS was compensated for its services to SBAM and the SBAM Funds. See Attachment I, which outlines payments in 2010 from SBAM and each of the SBAM Funds (“VCI-IV, GMPI-II, SAI-III, SBO, K&A, 280, Granite and VPP”) to GFS. Upon information and belief GFS continues to provide its financial services to SBAM and the SBAM Funds, and continues to be paid for same. See also footnote 16 to the Division’s Motion for Summary Disposition, which states that “SBAM continues to employ Greenwich Fund Services as its fund administrator.”

4. As part of its ongoing financial services to SBAM and the SBAM Funds, GFS provided substantial consulting, bookkeeping and administrative services in connection with the annual audits of the SBAM Funds.

5. Attachment I hereto provides that GFS was paid a total of \$286,959.84 in 2010 for its services to SBAM and the SBAM Funds, with “Doug” – Douglas Bisio, the President of GFS – netting \$152,799.84. Mr. Bisio’s “net” was in excess of my most recent salary of \$125,000.

6. I am a non-financial professional and did not “control” the audits as asserted by the Division in the first full paragraph of page 15 of its Motion. The Division offers no citation for this proposition.

7. I have a degree in History and a Juris Doctorate.

8. A list of some of the persons involved in the audit process is attached hereto at Attachment II.

9. Martin Sands and Steven Sands are the Co-Founders, Co-Partners, Co-Chief Executive Officers and Co-Senior Portfolio Managers of SBAM. See the attached pages from the SBAM website at Attachment III.

10. SBAM is owned by two Sands family trusts, and thus is controlled by such trusts. See also page 3 of the Division's Motion.

11. The payment of auditor bills was handled under the authority primarily of Steven Sands, but also under the authority of Martin Sands.

12. The Division's statement on page 6 of its Motion for Summary Disposition that I testified that "no changes were made to SBAM's policies and procedures after the entry of the 2010 Order" is misleading. As the transcript referenced by the Division plainly states, I testified that I couldn't "recall" any particular changes at the time of the testimony, but that "I could check."

13. The Division's statement in the first paragraph of page 14 of its Motion that it "called counsel for SBAM and the Sands in February 2014 to advise that they intended to recommend that an action be filed against SBAM, the Sands and Kelly" is true. The Staff called counsel for SBAM and the Sands, but inexplicably, and with adverse consequences to myself, did not communicate with me.

14. 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 to my Motion for Summary Disposition.

15. I engaged the law firm of Gusrae Kaplan Nusbaum PLLC (the "Gusrae Firm") in connection with this matter, and accordingly the Gusrae Firm acted as my counsel. See Attachment IV.

16. I did not serve in a legal capacity at SBAM during the relevant period.

17. Some weeks into my tenure as an officer of Trinity Cable LLC (a SBAM Fund portfolio company) I received a call from Steven Sands who told me that I was not to exercise any management authority with respect to the company as he and Gavin Watson (a SBAM Portfolio Manager) would be running the company.

18. I have not been paid by SBAM since May 15, 2014.

19. I have not received a bonus for my work in 2013.

20. Martin Sands and Steven Sands are not currently permitting SBAM or any of the SBAM Funds to provide me indemnification.

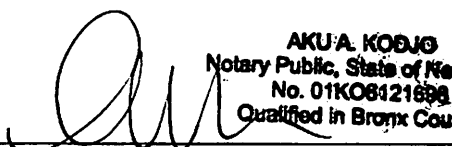
21. The loss of salary, bonus and indemnification has hampered my ability to defend myself.



---

CHRISTOPHER KELLY

Sworn to before me this  
03 day of February, 2015



---

Notary Public

AKU A. KODJO  
Notary Public, State of New York  
No. 01K06121698  
Qualified in Bronx County  
EXP: 04/17/17

# ATTACHMENT I

## GFS Revenue Breakout 2010

WIRE - VCI	750.00
WIRE - VCII	750.00
WIRE - VCIV	750.00
WIRE - VCIII	2,000.00
Wire - GMPII	2,000.00
WIRE - SAI	1,500.00
WIRE - SAIII	1,500.00
WIRE - SAII	1,500.00
Wire - GMPI	6,246.64
SBO	1,000.00
K&A	1,181.35
280	721.24
Granite	97.42
WIRE - VPP	1,000.00
WIRE - SBAM	<u>2,916.67</u>
Monthly GFS Gross	23,913.32
Annual GFS Gross	286,959.84
Salaries:	
Brian Fialko	(45,000.00)
John Lanser	(63,000.00)
Payroll Exp's	(12,960.00)
Rent	(8,400.00) 700/month
Email/Web Site	(2,400.00) 200/month
Insurance	(400.00) workers comp
Phone	<u>(2,000.00)</u>
Net to Doug	152,799.84

ATTACHMENT II

**SBAM Senior Portfolio Managers/Co-Founders/Co-Partners/Co-CEOs**

Martin Sands

Steven Sands

**SBAM Portfolio Managers**

David Claroni

Gavin Watson

Brian Cloonan

Timothy Doede

K. Daniel Libby

Scott Baily

**SBAM Partner**

Ervin Braun

**SBAM Analyst**

Jeff Umansky (worked directly with Steven Sands)

**SBAM Chief Operating Officer and Chief Compliance Officer**

Christopher Kelly

**SBAM Executive Assistants**

Eva Braun

Roz Warg

**Auditors**

**Cornick Garber Sandler**

Myles Schumer

David LaRocca

Salvatore Vicari

Others

**Lilling & Co. LLP**

Mark Lilling

Tom Sherwood

Others

**Administrator/Financial Services Provider to SBAM**

**Greenwich Fund Services**

Douglas Bisio

John Lanser

**Administrators**

**FundAdministration**

Kittie Kwan

Michael Hauser

Others

**ODB Fund Services**

Marc Rinaldi

Others, including Staff in India

**Mailer/Printer**

**Alphagraphics**

Lauren Hammarberg

Others

**Outside Counsel**

**Reed Smith**

Herb Kozlov

Kurt Gwynne

**Blank Rome**

Robert Mittman

**Wyatt Tarrant & Combs**

Robert Penta

Daniel Hitchcock

**Gilbride Tusa Last and Spellane**

Jonathan Wells

Bennett Last

Many Others

#### **Portfolio Companies and Their Management**

**O2HR**

Anthony Huff

**Progressive**

John Puglisi

Eugene Weiss

**Trinity Cable**

James Gee

James Hunter

**Gourmet Express**

Brad Jackson

Many Others

Martin S. Sands    Steven B. Sands

**Martin S. Sands**

*Founder, Partner and Senior Portfolio Manager*

As the Co Founder and Co CEO of Sands Brothers Asset Management LLC, Martin Sands plays a key role in driving the growth and development of the firm's many business ventures. He works diligently to enhance existing portfolio investments and to identify and carefully review new opportunities. His ability to understand various types of businesses and quickly evaluate business opportunities, including those arising from business crises, sets him apart. As a seasoned, 30 year veteran of the investment world, he provides valuable insight to businesses seeking alternatives and solutions.

Martin has been in the investment community his entire career, beginning in 1983. He worked originally on the sell side at several leading investment banking and brokerage firms in NYC. In 1990, he founded his own investment banking and brokerage business, Sands Brothers & Company, Ltd., which grew rapidly. In the 2002-2003 period, he moved away from the sell side to focus his efforts on asset management and principal investment, where he has built a highly diversified group of portfolio investments. His experience includes all aspects of capital structure, and he continues to seek opportunistic situations.

In addition to his role at Sands Brothers Asset Management, Martin has pursued other business interests. In keeping with his lifelong passion for the sport of lacrosse, he recently launched a national high school recruiting business under the name National Invitational 175, LLC. This firm organizes individual and team college recruiting showcases for current high school lacrosse players.

Building on his passion for biotechnology, which was fueled by early successful biotech investments, Martin is actively involved with OptMed, Inc., a developing biomedical company where he serves as Co Chairman.

Martin graduated from Union College where he remains an active alumnus and serves on the President's Counsel. He lives in Greenwich, CT with his wife and four children.

**Current Titles**

Sands Brothers Asset Management, LLC 1999

Co Founder, Co CEO

Genesis Merchant Partners, LP 2007

Senior Portfolio Manager

Gourmet Express LLC, 2010

Director

OptMed, Inc. 2011

Co Chairman

National Invitational 175, LLC 2011

Founder

Viactiv Holdings (d/b/a Viactiv Lifestyles), 2012

Co Founder, Co CEO



Martin S. Sands Steven B. Sands

**Steven B. Sands**

*Founder, Partner and Senior Portfolio Manager*

Steven B. Sands has more than 25 years of investment experience in areas that include investment banking, venture capital, real estate, money management, sales/brokerage and merchant banking. Steven is a co founder of Sands Brothers. He is also a founder and manager of the Select Access funds, Chairman of Critical Capital Growth Fund, which is licensed with the Small Business Administration, a manager of a group of venture capital funds, a manager of a group of special purpose partnerships, and he is the former Chairman of Olympic Cascade Financial Corporation.

Steven's financial experience began as a member of the Fixed Income Team with L.F. Rothschild. Thereafter, Steven leveraged his experience into servicing both high net worth and institutional accounts by joining Oppenheimer and Co. He continued to broaden his experience and eventually joined Laidlaw Adams & Peck, where he focused on private equity and corporate finance. Eventually Steven joined his brother Martin in the opening of the New York operations for Rodman & Renshaw, where his experience and role earned him a seat on the firm's board. In 1990, he joined his brother in founding SB & Co., an investment bank, brokerage firm and NYSE member.

Steven has focused the past five years on both the real estate business and corporate deal business. On the corporate side, he worked closely on numerous venture capital and private equity transactions. He continues to act as a portfolio manager of the venture funds he co founded. In addition, he has worked closely with his brother Martin in assembling, acquiring and/or selling over 500,000 square feet of commercial office space.

Steven earned a bachelor's degree from Hamilton College. Steven has served as a trustee of the Friends School in Locust Valley, NY and is active in other charitable and scholastic institutions. Steven lives in Locust Valley, NY with his wife and three children.

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**GUSRAE KAPLAN NUSBAUM PLLC**

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**PRIVILEGED and CONFIDENTIAL  
ATTORNEY/CLIENT COMMUNICATION**

February 18, 2014

Christopher Kelly  
c/o Sands Brothers Asset Management  
15 Valley Drive  
Greenwich, CT 06831

Re: In the Matter of SBAM Venture Capital Funds, SEC File No. (NY-08127)

Dear Mr. Kelly:

This firm has agreed to represent you in connection with the above-referenced pending SEC Enforcement Action (the "Matter"). This representation will relate to any testimony, document production, responses and litigation concerning the Matter and further investigation by the SEC. This firm has represented Sands Brothers Asset Management ("SBAM"), and various of its affiliated entities, Martin Sands and Steven Sands (the "Sands Entities") in the past and may represent the Sands Entities, and/or you in the future. Furthermore, this firm has also agreed to represent Martin Sands and Steven Sands (the "Individuals") in their individual capacity in connection with the Matter, and this firm may also represent other individuals in the Matter (the "Individuals"). Upon the conditions hereinafter stated, this letter sets forth the terms and conditions of this firm's representation of you in connection with the Matter as it concerns the past and/or future representation of the Sands Entities and/or the Individuals and/or you. This agreement, as well as our Retainer Agreement with SBAM, supersedes any prior agreement concerning representation and embodies the entire agreement in connection with this firm's representation of you and Sands Entities and/or the Individuals in connection with the Matter.

In all matters where there is more than one entity or individual involved, there is undoubtedly some degree of conflict between the specific interests of the various parties. The Code of Professional Responsibility for Lawyers, as adopted by the American Bar Association and the Bars of the various states, permits a lawyer to undertake the joint representation of

GUSRAE KAPLAN NUSBAUM PLLC

Christopher Kelly  
February 18, 2013  
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multiple clients if the lawyer believes that he or she can adequately represent the interests of each client and each client knowingly consents to that joint representation.

At this time, we believe that this firm can adequately represent you, the Sands Entities and/or the Individuals in the Matter. We further believe, that this firm can adequately represent the Sands Entities and/or the Individuals and/or you in the future regardless of its representation of you and the other individual or entities in connection with the Matter. Based upon our review of the file to date, we have not found any apparent conflict of interest that would serve to prevent us from undertaking such representation. You must be aware, however, that there is no guarantee that a conflict will not arise in the future, or that facts will not come to light which would give rise to an actual or potential conflict between your position, that of the Sands Entities' and/or the Individuals.

Furthermore, if in the future we undertake to represent you and you believe it advisable to invoke your constitutional privilege against self-incrimination or you refuse to cooperate with any regulatory authority, there may be a conflict of interest between you, the Sands Entities and/or the Individuals.

If we determine during the course of our representation of you, the Sands Entities and/or the Individuals in connection with the Matter that a conflict of interest potentially exists between you, the Sands Entities and/or the Individuals, and if we are representing you at that time, we will notify you of this fact and of your right to employ other counsel to represent you. If we are representing you and if at any time you become aware of any conflict or potential conflict of interest between you, the Sands Entities and/or the Individuals, we ask that you immediately call the fact to our attention so that we can consider whether we can continue to represent you, the Sands Entities and/or the Individuals. You always have the right to obtain your own counsel at your own expense. Of course, either party at any time has the right to determine that they shall proceed independently of the other, upon written notice to the other party.

We reserve our right to potentially bill you if such becomes necessary. You may, of course, terminate our services to you at any time.

If we are representing you and if there is an actual conflict between this firm's representation of you, the Sands Entities and the Individuals, we may be forced to withdraw as your counsel and to continue our representation with the Sands Entities and/or the Individuals. Further, if for any other reason you decided to retain other counsel to represent you in connection with the Matter at some later date, we may continue to represent, the Sands Entities and/or the Individuals. You explicitly agree that you will not seek to disqualify this firm from continuing to represent the Sands Entities, and/or the Individuals, should any conflict of interest develop or should it become necessary or desirable for you to obtain other counsel.

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As in the ordinary attorney-client relationship, any information given by you in confidence to us is privileged information and may not be disclosed without your consent. In the context of this joint representation, however, you expressly agree that any information you provide to us is and may be made available to the Sands Entities and/or the Individuals. To the extent any privileged information provided by you prior to today has been shared with the Sands Entities and/or the Individuals prior to today, you agree that you will not assert such sharing of information as a basis for the disqualification of this firm.

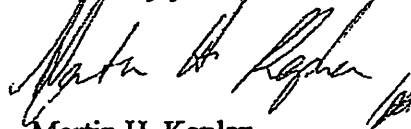
You should also be aware that if it is ultimately found that you violated any of the securities laws, rules or regulations, you might be penalized for such violation(s) and that such penalty may impact negatively upon your standing with federal, state authorities and self-regulatory agencies.

Please read this document carefully and seek immediate clarification of anything that you do not understand, either from counsel of your choosing or from this firm. If, after reading this document and seeking any clarification you may need from your counsel or this firm, you decide that you want this firm to represent you, please sign below, date your signature and return to me the signed and dated original of the letter.

By signing this document, you are acknowledging that you have read it, that you understand its terms, and that you accept the conditions contained herein.

By signing this document, you acknowledge that we have previously discussed the potential conflict of interest relating to this firm representing the Sands Entities and/or the Individuals in relation to the Matter and that you sufficiently understand and accept such potential conflicts of interest.

Very truly yours,



Martin H. Kaplan

ACKNOWLEDGED AND ACCEPTED:



Christopher Kelly

February 26, 2014