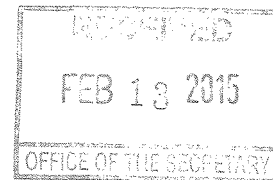


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

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



**In the Matter of**

**SANDS BROTHERS ASSET  
MANAGEMENT, LLC, STEVEN  
SANDS, MARTIN SANDS AND  
CHRISTOPHER KELLY,**

**Respondents.**

**DECLARATION OF NANCY A. BROWN**  
**IN SUPPORT OF THE DIVISION'S OPPOSITION TO THE MOTION**  
**FOR SUMMARY DISPOSITION OF RESPONDENT CHRISTOPHER KELLY**

I, Nancy A. Brown, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as a Senior Trial Counsel in the Division of Enforcement (the "Division"). I submit this declaration in support of the Division's opposition to the Motion for Summary Disposition filed by Respondent Christopher Kelly pursuant to Rule of Practice 250(a). I am fully familiar with the facts and circumstances herein.

2. On March 14, 2013, the staff issued a subpoena for investigative testimony to Christopher Kelly c/o Martin Kaplan of Gusrae, Kaplan, Bruno & Nusbaum PLLC. Attached to the subpoena was the Commission's Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." That letter and its attachments are appended to the Declaration of

Janna Berke (“Berke Declaration”), executed February 12, 2015, and submitted herewith, as part of Exhibit P.

3. On April 22, 2013, Kelly appeared pursuant to Subpoena for testimony in the Division’s investigation. Kelly was again provided with the Form 1662 as Exhibit 1 in his testimony. Kelly testified that he was represented by counsel for the testimony, and both Martin Kaplan and Robyn Paster, identified themselves as Kelly’s counsel. Mr. Kaplan and Ms. Paster at the time also represented Sands Brothers Asset Management LLC (“SBAM”) and Martin Sands and Steven Sands (collectively, “the Sands”); they currently still represent SBAM. The relevant pages from Kelly’s transcript are appended to the Berke Declaration, as part of Exhibit P.

4. In a call I and other staff members had with Mr. Kaplan in August 2013 about the status of the investigation, Mr. Kaplan gave no indication that he was no longer representing SBAM, the Sands or Kelly.

5. On February 7, 2014, in a call for which I and other members of the staff were present, Wendy Tepperman, Assistant Regional Director, advised Mr. Kaplan of certain settlement terms that the staff was prepared to recommend to the Commission for charges against SBAM, the Sands and Kelly related to SBAM’s Custody Rule violations. She further advised that, if we were unable to reach an agreement, the staff would proceed with the Wells process. We directed our call to Mr. Kaplan because we believed that he represented all potential Respondents – including Kelly – as he did at the investigative testimony of each, in connection with subpoena responses, and during various phone calls with the staff during the investigation. Mr. Kaplan did not indicate on that call that he no longer represented all potential Respondents (including Kelly).

6. On February 11, 2014, Kelly left Ms. Tepperman a voice mail. Appended hereto as Exhibit 1 is a transcript, prepared by the staff, of the recording of that voice mail.<sup>1</sup>

7. On February 12, 2014, Ms. Tepperman and I returned Kelly's call. We asked whether Kelly was represented by Mr. Kaplan, and explained that we could not have any conversation with him about the substance of the investigation if he was represented. Kelly would not confirm whether or not he was represented. We explained that if Kelly did in fact have counsel – be it Mr. Kaplan or another attorney – his lawyer should reach out to us directly and that he should not contact us again unless he determined he was not represented. Ms. Tepperman told Kelly that we would provide time for him to determine if he was represented and to retain new counsel if he chose to do so. At no time during that call (or in any other conversation with Kelly), did Ms. Tepperman or any other staff member tell Kelly that we would keep his communications confidential.

8. On February 14, 2014, I spoke with Mr. Kaplan. He confirmed that he continued to represent SBAM, the Sands and Kelly.

9. On the evening of February 18, 2014, Kelly again left Ms. Tepperman a voice mail. Appended hereto as Exhibit 2 is a transcript, prepared by the staff, of the recording of that voice mail. In it, Kelly asserted that he had never been represented by Kaplan, and continued to be unrepresented.

10. On February 19, 2014, in a call for which I and other staff members were present, Mr. Kaplan advised that none of his clients was prepared to accept the settlement proposals. In

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<sup>1</sup> The staff retains the recordings themselves. Copies of the recordings have been provided to all Respondents. The Division sent them to Mr. Kaplan on April 25, 2014, in his capacity as attorney for Kelly (see Exhibit 6 hereto, infra). It sent them to Andrew Fish, a lawyer Kelly retained later, on June 6, 2014. In addition, the Division made them available to all Respondents as of November 5, 2014 as part of the Division's investigative file under Rule of Practice 230.

that call, Mr. Kaplan gave no indication that he no longer represented all four potential Respondents.

11. On February 20, 2014, in a call for which I and other staff members were present, Ms. Tepperman returned Kelly's February 18, 2014 call. On that call, Kelly again maintained that he was not represented. Ms. Tepperman explained that, before we would speak substantively about the investigation with him as an unrepresented person, Kelly should notify Mr. Kaplan that he was no longer represented by him. Alternatively, Ms. Tepperman offered to convey that message to Kaplan directly if Kelly preferred not to speak to Kaplan. Kelly told us that he would call Kaplan.

12. On February 24, 2014, Ms. Tepperman and I called Kelly again to find out if he had informed Kaplan that Kaplan no longer represented him. When Kelly told us that he had not because Kaplan was out of town, we gave Kaplan's cell phone number to Kelly and asked that he contact Kaplan promptly.

13. On February 28, 2014, I and Janna Berke called Kelly. I left Kelly a voice mail asking him if he had reached Kaplan.

14. On March 2, 2014, Kelly left a voice mail for me. Appended hereto as Exhibit 3 is a transcript, prepared by the staff, of the recording of that voice mail. In it, Kelly advised that he had made a date to talk to Kaplan on March 3, 2014. He did not advise the staff that he had executed an engagement letter with Kaplan on February 26, 2014. A true and correct copy of that letter, as produced to the staff by Kaplan on December 4, 2014, is appended hereto as Exhibit 4.

15. On the afternoon of March 3, 2014, in a call for which I and other staff members were present, Ms. Tepperman called Kelly and left a voice mail asking him to let us know

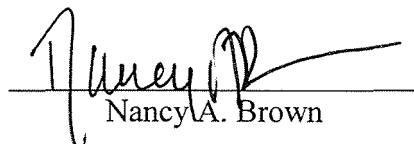
whether he had notified Mr. Kaplan that he did not represent Kelly. Ms. Tepperman explained that we needed a resolution on this subject, and, if we did not hear back from Kelly the following day, we would plan to inform Mr. Kaplan of our understanding that he did not represent Kelly. She did not tell him that he should or must retain counsel. She did not tell him that she would share the content of his communications to the staff if he did not retain counsel or otherwise. Kelly did not return that call on March 3, 2014.

16. Early on March 4, 2014, Kelly left a voice mail for Ms. Tepperman. Appended hereto as Exhibit 5 is a transcript, prepared by the staff, of the recording of that voice mail. In it, Kelly advised Ms. Tepperman that he was in fact represented by Kaplan. While Kelly stated that Ms. Tepperman had promised that the staff would keep his communications confidential, Ms. Tepperman had never given him such assurances.

17. Appended hereto as Exhibit 6 is a true and correct copy of the April 25, 2014 letter Janna Berke sent to Kaplan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 12, 2015  
New York, NY

  
Nancy A. Brown

**February 11, 2014 Voicemail: (Kelly to Tepperman)**

Hey Wendy, Chris Kelly with Sands Brothers Asset Management calling on the Sands Matter, confidentially. I will rely on your good character and professionalism to respect the confidentiality. Thank you very much. I heard from Marty Kaplan who is the Sands' attorney a couple days ago. He mentioned my name in connection with the matter. I was a little surprised because my understanding is that it is focusing on the late audits. I obviously have no responsibility for late audits. No firm would put a CCO in charge of that; Sands obviously never did, so they never relied on me for that. I've only had a handful of very short, somewhat cryptic conversations with Mr. Kaplan. If you could please give me a courtesy call, I would appreciate it very much, on a totally confidential basis. Just tell me where things stand, that would be very helpful. Chris Kelly. 917 414-9704. Thank you so much, Wendy. Bye bye.

**February 18, 2014 Voicemail: (Kelly to Tepperman)**

Hey Wendy, Chris Kelly at Sands Brothers. I have been contemplating things. Obviously I am still in the dark, but I can tell you a couple of things. One, I have never been represented by Marty Kaplan -- there is no engagement letter, there is no conflict letter. Actually, I am surprised that the SEC would presume anything without talking to me, without any evidence of representation. I am not represented by Marty Kaplan, so I do have the right to know what is going on. If there is anything I should know about, I deserve time to react to anything, again if there is anything to react to. You may call me and tell me that you understand that CCOs have never in the history of Wall Street been charged with responsibility for audits, or you may tell me that you have come up with a groundbreaking theory that deems CCOs somehow in charge of audits. It is barely a week since my name came up through Marty Kaplan, so I do deserve some time if there is something to react to. I promise you I will reach out to attorneys to see if there is some guidance there. I also promise I will look for another job so the Sands threats to fire me if I don't go along -- whatever that means -- will be mooted. My understanding is that you are focusing on the 120-day rule. I have seen production related to that. Obviously, I have never had any responsibility or authority for getting the audits out on time. As far as supervision, everybody in the working group was aware of the rule, I made sure of that over all these years. In the defense of the working group, there was always the expectation that the audit would go out on time, but there were I think unforeseen circumstances that came up. And, the focus was always on getting an accurate audit out there. I did mention that the SEC would not be happy if the audit didn't go out on time, and of course I was right on the money. Just to repeat about me, because we are both human beings, I have \$[REDACTED] base salary. I have no money. I am in no position to finance Marty and Steven Sands. So, if you could take all of this into account. I need to know what's going on, if there's anything interesting, and I need time to react, if that makes sense. Thanks so much, you guys were very professional when you called me the other day. Appreciate it. 917 414-9704. Thank you so much. And this is all very confidential.

**March 2, 2014 Voicemail: (Kelly to Brown)**

Hi Nancy, Chris Kelly at Sands Brothers. First of all, as you know, our communications are confidential. That is the basis of our calls. So, I appreciate you respecting that. Wendy has promised. So, I appreciate that. I will be talking to Marty Kaplan on Monday, March 3. He was in Florida. He's a busy guy, so Monday March 3. I was hoping to get the story from you guys, but you refuse, so I'll get it filtered through him. I hope he'll be more transparent and open about what's going on. If there's anything I need to digest or research, Wendy promised that I would get some time, so I appreciate you respecting that. If I don't need time, that's great. That would be certainly the most rational result. Ironically, we are very busy here because it's audit season. As you know, we have got the audit team on it. We've got the administrators on it. We have got Steven and Marty Sands on it, who are in charge. We've got the portfolio manager, we've got the analysts, we've got all the managers of many of the underlying investments, so we literally have many dozens of people working on the audit right now. As you know, I have no responsibility whatsoever for getting the audit out on time, although I do cajole and pester, and beg and yell and scream occasionally about it, and the Sands Brothers have never relied on me whatsoever in getting the audits out on time. So please, I will just end by saying please do the right thing here. Please act in accordance with the purported values of the SEC. Please do not do anything immoral. Thank you. Bye bye.



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December 4, 2014

VIA EMAIL to [BrownN@sec.gov](mailto:BrownN@sec.gov) and  
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New York Regional Office  
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VIA EMAIL to [BerkeJ@sec.gov](mailto:BerkeJ@sec.gov) and  
U.S. MAIL

Janna I. Berke, Esq.  
U.S. Securities and Exchange Commission  
New York Regional Office  
200 Vesey Street, Ste.400  
New York, NY 10281-1022

Re: In the Matter of SBAM Venture Capital Funds (NY-08127)

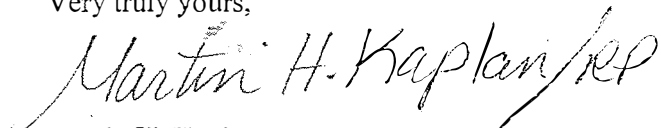
Dear Ms. Brown and Ms. Berke,

In accordance with our telephone conversation on December 2, 2014, enclosed herewith is a copy of the conflict letter executed by Christopher Kelly in connection with the above-referenced matter.

In addition, I reviewed the decision you referred to during our telephone call, In the Matter of Morgan Asset Management, Inc., Morgan Keegan & Company, Inc., James G Kelsoe, Jr., and Joseph Thompson Weller, CPA, Release No. 657, 98 S. E. C. Docket 337. I suggest to you that your position is inconsistent with the decision.

Should you have any questions please contact me or in my absence, my associate Robyn D. Paster, Esq.

Very truly yours,



Martin H. Kaplan

Encl.

**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  
Page 2

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.

GUSRÆ KAPLAN NUSBAUM PLLC

Christopher Kelly  
February 18, 2013  
Page 3

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.

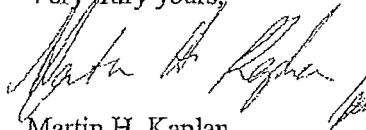
You should also be aware that if it is ultimately found that you violated any of the securities laws, rules or regulations, you might be penalized for such violation(s) and that such penalty may impact negatively upon your standing with federal, state authorities and self-regulatory agencies.

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.

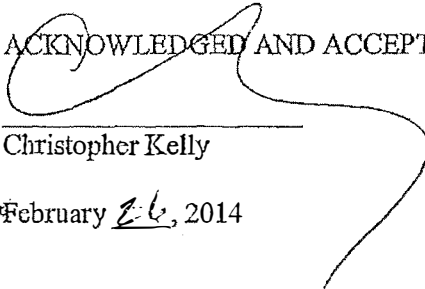
By signing this document, you are acknowledging that you have read it, that you understand its terms, and that you accept the conditions contained herein.

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

**March 4, 2014 Voicemail: (Kelly to Tepperman)**

Hi Wendy, Chris Kelly at Sands Brothers. First, you promised confidentiality so I do need you to respect that. A promise is a promise. Please don't break the promise. That wouldn't be good for anybody. I did talk to Marty Kaplan. You said you would give me time. I talked to him yesterday. You said you would give me time. I hope would you honor that. If the question is 'Am I represented by Marty Kaplan?' the answer is 'Yes.' Given what he told me, but anyway. I will be clear, the answer is yes. OK. Chris Kelly is represented by Marty Kaplan. I'm not sure what else to say about that, except please, please do the right thing. Don't do anything immoral, please. Know that I had no responsibility for late audits. That's just a fact. There are dozens of people involved in getting audits out. OK. I gave you an answer. Please do the right thing. Bye.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
NEW YORK REGIONAL OFFICE

200 VESEY STREET  
ROOM 400  
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT LINE  
(212) 336-9144  
berkej@sec.gov

April 25, 2014

**Via Email**

Martin H. Kaplan, Esq.  
Gusrae Kaplan Bruno & Nusbaum PLLC  
120 Wall Street  
New York, NY 10005

***In the Matter of SBAM Venture Capital Funds (NY-08127)***

Dear Mr. Kaplan:

We are writing in connection with the above-referenced investigation to confirm our conversation of today in which we alerted you to certain information that potentially raises a conflict of interest in your joint representation of Christopher Kelly, Steven Sands, Martin Sands and Sands Brothers Asset Management, LLC ("SBAM" or the "Adviser"). As discussed, we also enclose to you, in your capacity as attorney to Christopher Kelly, the recordings of voice mails the staff received from Mr. Kelly.

As you are aware, this investigation concerns SBAM's repeated failure to timely distribute audited financial statements to investors in its pooled investment vehicles pursuant to Rule 206(4)-2(b)(4) of the Investment Advisers Act of 1940, 17 C.F.R. § 275.206(4)-2(b)(4), or to otherwise comply with the applicable regulations concerning custody. As we explained in our telephone conversation today, and as the enclosed voice mails reflect, Mr. Kelly has confidentially represented to the staff that he believes he had "no responsibility for [the] late audits" (February 11, 2014 Voice Mail), that Steven and Martin Sands "never relied on" him for those audits (*id.*), and that he advised all concerned of the firm's obligations under the Act in this regard. (February 18, 2014 Voice Mail.) However, you previously told us that Steven Sands and Martin Sands relied on Mr. Kelly in connection with the late audits. Thus, it appears that Mr. Kelly may have interests in this investigation that are divergent from, and potentially adverse to, those of Messrs. Sands and the Adviser. As a result, you and your firm may have an unresolved conflict of interest in representing all of these parties jointly. *See* NEW YORK RULES OF PROFESSIONAL CONDUCT, Rule 1.7 (stating that, with limited exception, "a lawyer shall not represent a client if a reasonable lawyer would conclude that . . . the representation will involve the lawyer in representing differing interests").

The potential conflict becomes even more apparent in light of the fact that the unsolicited voice mails that Mr. Kelly left with the staff strongly suggest that he does not want

the content of his voice mails to be shared with Steven Sands or Martin Sands.<sup>1</sup> (*See, e.g.*, February 18, 2014 Voice Mail (stating that the information covered in the voice mail is “all very confidential” and further that “I promise I’ll look for another job so the Sands’ threats to fire me if I don’t go along – whatever that means – will be mooted”).) Thus, while Mr. Kelly seems to wish that Steven Sands and Martin Sands not learn of his voice mails to the staff, that desire may operate as a material limitation on your representation of Seven Sands and Martin Sands. *See* N.Y. RULES OF PROFESSIONAL CONDUCT, Rule 1.6 (discussing the lawyer’s obligation not to reveal information that a client has requested be kept confidential); *see also id.*, Comment [31] to Rule 1.7 (noting that a client has “a right to be informed of anything bearing on the representation that might affect [his or her] interests”).<sup>2</sup>

In light of the above, the staff has serious concerns that a conflict of interest exists that could prevent your representation of all parties (and perhaps of any parties) in this investigation. Accordingly, if you and your firm intend to continue as counsel for all or some of your clients in this investigation, we request that you confirm in writing by May 2, 2014 that your firm has addressed the relevant responsibilities and obligations under the applicable rules of professional conduct, including, without limitation, NEW YORK RULES OF PROFESSIONAL CONDUCT Rule 1.7 (Conflict of Interest: Current Clients), Rule 1.6 (Confidentiality of Information), and, if you or your firm proceed in representing some but not all of the parties, Rule 1.9 (Duties to Former Clients). As we discussed today, you will let us know how you intend to proceed by the close of business next Friday, May 2, 2014.

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<sup>1</sup> As we discussed earlier today, Mr. Kelly’s communications were unsolicited by the staff. When we did speak to Mr. Kelly, in each instance, we requested that he not discuss any substantive information and told him that we would not speak to him substantively about the case if he was represented by counsel. Further, when Mr. Kelly informed us that he was not represented by counsel, we told him that you had to be informed of that fact prior to any substantive discussion. Subsequently, Mr. Kelly left us a voice mail indicating that he was, in fact, represented by you. The staff has had no further contacts with Mr. Kelly since we received that voice mail.

As we also discussed earlier, the staff did not make any representations to Mr. Kelly regarding the confidentiality of his communications. The Commission may use any information provided to it as an admission, in any other manner permitted by the Federal Rules of Evidence, or for any of the Routine Uses of Information described in Form 1662, “Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena.” The subpoena for Mr. Kelly’s testimony during the investigation included Form 1662 and Mr. Kelly was provided with a copy of Form 1662 during that testimony.

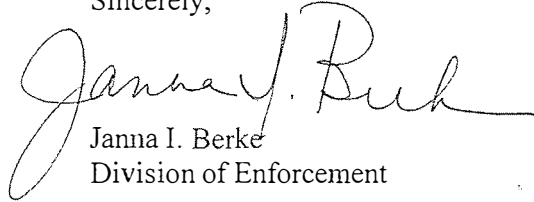
<sup>2</sup> The New York Bar Association’s Comment [31] to Rule 1.7 of the New York Rules of Professional Conduct says in fuller part:

As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client’s interests and the right to expect that the lawyer will use that information to that client’s benefit. At the outset of the common representation and as part of the process of obtaining each client’s informed consent, the lawyer should advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other.

(Internal citations omitted.)

If you have any questions or would like to discuss this matter further, please let me know and we will arrange a call.

Sincerely,



Janna I. Berke  
Division of Enforcement

Enclosures