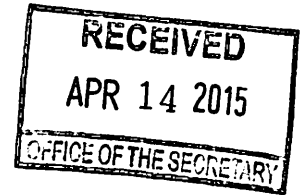


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



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

**In the Matter of**

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

**Respondents.**

**SANDS BROTHERS ASSET MANAGEMENT, LLC'S REQUESTS FOR  
CERTIFICATION OF RULING FOR INTERLOCUTORY REVIEW  
AND TO STAY THE PROCEEDINGS**

Respondent Sands Brothers Asset Management, LLC ("SBAM"), by its undersigned counsel, respectfully requests, pursuant to Rule 400(c)(2) and Rule 401 of the Rules of Practice<sup>1</sup> of the U.S. Securities and Exchange Commission that the Administrative Law Judge (the "ALJ") certify to the Commission for interlocutory review of his April 7, 2015 Order (the "Order") disqualifying Martin H. Kaplan, Esq. ("MHK") and Gusrae Kaplan Nusbaum PLLC ("GKN" together with MHK, "Kaplan")<sup>2</sup> from representing SBAM in the instant matter and to stay the proceedings pending certification and the Commission's decision on this question.

On February 25, 2015, the ALJ *sua sponte* issued an Order to Show Cause why Kaplan should not be disqualified as counsel for SBAM (the "ALJ's OSC").<sup>3</sup> Kaplan submitted his

<sup>1</sup> See 17 C.F.R. § 201.400(c)(2) and § 201.401.

<sup>2</sup> References to Kaplan in this Motion shall be understood to apply to both Martin H. Kaplan, Esq. and Gusrae Kaplan Nusbaum PLLC.

<sup>3</sup> It is of critical relevance that the ALJ's theory for disqualification has considerably shifted from the ALJ's OSC to the Order. The ALJ's OSC was initially concerned that "Kaplan is likely privy to confidential information regarding Kelly []" and "the appearance of a lack of integrity." See the ALJ's OSC at pp. 2-3. And the Order concedes that "[ ] Kaplan arguably does not actually possess or did not actually obtain confidential information about

response on March 6, 2015 (“Kaplan’s Response”). The Division of Enforcement and Christopher Kelly submitted their respective responses to Kaplan’s Response on March 13, 2015. Kaplan thereafter submitted a reply on March 18, 2015 (“Kaplan’s Reply”). On April 7, 2015 the ALJ issued a ruling disqualifying Kaplan from representing SBAM in this proceeding.<sup>4</sup>

SBAM acknowledges that “[p]etitions for interlocutory review are disfavored” however, in the instant matter, its request should be certified by the ALJ because it meets the requirements set forth in Rule 400(c) for certification for interlocutory review.<sup>5</sup> The ALJ’s ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and immediate review will enhance the completion of this proceeding. Alternatively, there are multiple “extraordinary circumstances” to warrant immediate interlocutory review by the Commission.<sup>6</sup> The ALJ’s ruling is premised on the Csapo and Blizzard decisions,<sup>7</sup> which are not controlling law as in 2010 the Morgan Keegan<sup>8</sup> case significantly altered the standard of law for determining disqualification. This erroneous ruling and application of law severely prejudices SBAM and deprives it of its constitutional right to counsel of its choice and under processes of the Administrative Procedure Act.<sup>9</sup>

The ALJ’s ruling involves a controlling question of law as to which there is substantial ground for difference of opinion.<sup>10</sup> SBAM believes the ruling is erroneous for among other reasons, the ALJ’s ruling wrongfully relies on the holdings in Csapo and Blizzard, when in fact

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Kelly []” and shifts the theory of disqualification and alleges that Kaplan “colluded with the Sands to formulate a defense that would pin the blame on Kelly.” See the Order at p. 5.

<sup>4</sup> It is noteworthy that SBAM’s request for oral argument set forth in Kaplan’s Reply was never addressed by the ALJ and accordingly, impinged on SBAM’s due process rights.

<sup>5</sup> See Rule 400(c)(2).

<sup>6</sup> See Rule 400(a).

<sup>7</sup> See SEC v. Csapo, 533 F.2d 7, 12 (D.C.Cir.1976); In Re Blizzard, Release No. 2032, (Apr. 24, 2002), 2002 WL 714444.

<sup>8</sup> In the Matter of Morgan Asset Mgmt. et al., SEC Admin. Proceedings Rulings Release No. 657 (July19, 2010).

<sup>9</sup> See 5 U.S.C. § 555(b).

<sup>10</sup> See Rule 400(c)(2).

Morgan Keegan controls. SBAM also questions the authority of ALJ to move *sua sponte* to disqualify counsel.<sup>11; 12</sup>

Extraordinary circumstances exist for the immediate review of the Order by the Commission because the ruling failed to use the appropriate standard of law for determining disqualification as set forth in Morgan Keegan. The ALJ's ruling adopted an overly broad interpretation of the duty of loyalty and resulted in an inappropriate interference with the attorney-client relationship. This misapplication of the standards applicable to attorneys representing parties before the Commission has far reaching implications and the conflict in the current case law should be rectified by the Commission. The ruling also ignored state law and standards underlying counsel and his firm's use of advanced conflict waivers to address standard conflict issues. Immediate review will materially advance the completion of the proceeding and may significantly conserve Commission resources if Kaplan is reinstated as counsel because Kaplan represented SBAM for nearly a decade and is familiar with SBAM's complex business structure and the facts and circumstances of the instant matter.

In conclusion, SBAM respectfully requests that the ALJ certify to the Commission his ruling within the Order for interlocutory review pursuant to Rule 400, and that, pursuant to Rule 401, the hearing be stayed pending a Commission decision on the disqualification. The prejudice to SBAM (albeit, the individuals too) is so material, that SBAM also requests that the Commission expedite the briefing schedule under Rule 450(a)(2)(v).<sup>13</sup>

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<sup>11</sup> See In Re Blizzard, Release No. IA-2030, (Apr. 23, 2002), 2002 WL 662783, at footnote 6, referencing that the Jean Paul Bolduc, Release No. 42096 (Nov. 4 1999), 1999 WL 1048643 order "grant[ed] interlocutory review based on the possible ambiguity in Commission rules and the possibility that failure to grant review could result in [the] need for [a] second trial").

<sup>12</sup> 17 C.F.R. § 201.103(a) provides that the ALJ has "the authority to do all things necessary and appropriate to discharge [his] duties [including] [r]egulating the course and conduct of the parties and their counsel"—it is unclear and ambiguous whether the ALJ has the authority to *sua sponte* issue an OSC requesting disqualification, in lieu of Enforcement moving for disqualification.

<sup>13</sup> See 17 C.F.R. § 201.450(a)(2)(v).

Dated: New York, New York  
April 13, 2015

Respectfully submitted,  
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