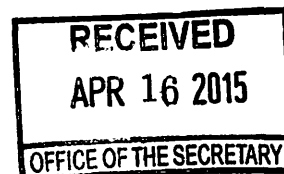


**HARD COPY**

**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.**

**RESPONDENTS STEVEN SANDS AND MARTIN SANDS' MEMORANDUM IN  
SUPPORT OF SANDS BROTHERS ASSET MANAGEMENT, LLC'S REQUESTS FOR  
CERTIFICATION AND TO STAY THE PROCEEDINGS, OR, IN THE ALTERNATIVE,  
MOTION FOR CLARIFICATION**

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Dated: April 15, 2015

Respondents Steven Sands (“S. Sands”) and Martin Sands (“M. Sands”) (collectively the “The Sands”), respectfully submit their memorandum in support of Sands Brothers Asset Management, LLC’s (“SBAM”) Requests for Certification of Ruling for Interlocutory Review and to Stay the Proceedings. In the alternative, The Sands move for clarification of the Administrative Law Judge’s (“ALJ”) Disqualification Order of April 7, 2015 (“Disqualification Order”).

**I. ADDITIONAL CONSIDERATIONS SUPPORT CERTIFICATION FOR INTERLOCUTORY REVIEW.**

In considering SBAM’s request for certification, the ALJ should remain cognizant of the substantial due process concerns that the Disqualification Order poses for The Sands. Under well settled law, due process requires, among other things, that defendants receive “adequate notice of the charges” against them and “an opportunity to defend against those charges” before a disposition is rendered. *In re Application of Sundra Escott-Russell*, Release No. 43363, 2000 WL 1423640, at \*4 n.15 (Sept. 27, 2000). But the Disqualification Order determined that The Sands engaged in “collusion” (at 5) without The Sands first receiving meaningful notice and opportunity to be heard on that issue.

The issue of “collusion” did not become a live one in this case until *after* the briefing deadlines on the Order to Show Cause had passed. The Order to Show Cause itself was directed solely to Kaplan and concerned only matters relating to Kaplan’s legal representation of Kelly: whether Kaplan had a conflict of interest with respect to Kelly and whether Kaplan had obtained a valid conflict waiver from Kelly (Order to Show Cause at 3). Nothing in the ALJ’s formulation of the issues subject to the Order to Show Cause suggested that The Sands’ conduct would be of any relevance to the ALJ; nothing in the substance of Kaplan’s response did either. Nonetheless,

the Order may have made some combination of legal and factual findings regarding The Sands' conduct.

Certification may provide an opportunity—either for the Commission on appeal or for the ALJ on a potential remand—to clarify the scope of evidence, allegations, and conduct relevant to the issue of Kaplan's disqualification. For this reason, in addition to those raised by SBAM, certification for interlocutory review pursuant to Rule 400 is warranted.

**II. IN THE ALTERNATIVE, CLARIFICATION OF THE DISQUALIFICATION ORDER IS WARRANTED.**

Should the ALJ deny SBAM's request for interlocutory review, The Sands respectfully request, pursuant to Rule 154, that the ALJ clarify the scope of the Disqualification Order's rulings and findings. As presently worded, the Disqualification Order (at 5) appears to make a finding and/or ruling with regard to The Sands, concluding that The Sands "colluded with" Kaplan "to pin the blame on Kelly." This conclusion is a notable outlier in a Disqualification Order that otherwise focuses exclusively on Kaplan's conduct, and an unanticipated departure from the issues set forth in the Order to Show Cause, which concerned Kaplan only.

In light of these circumstances, The Sands request that the ALJ clarify that (a) the Disqualification Order makes no findings of fact or rulings of law with respect to, or binding on, The Sands, and (b) that any findings of fact or rulings of law relate only to Kaplan.

Dated: April 15, 2015

Respectfully submitted,

 with permission TW

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