

**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.**

**DIVISION OF ENFORCEMENT'S (1) MOTION FOR LEAVE TO FILE  
AN OPPOSITION TO THE REQUEST OF SANDS BROTHERS ASSET  
MANAGEMENT, LLC FOR INTERLOCUTORY REVIEW AND (2) OPPOSITION TO  
RESPONDENT'S MOTION FOR A STAY OF PROCEEDINGS**

**DIVISION OF ENFORCEMENT  
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**Dated: May 4, 2015**

The Division of Enforcement (the “Division”) respectfully submits its (1) Motion and Memorandum of Law in Support of its Motion for Leave to File an Opposition to the Request of Respondent Sands Brothers Asset Management, LLC (“SBAM”) for Interlocutory Review; and (2) Memorandum of Law in Opposition to SBAM’s Motion for a Stay of Proceedings.

**I.**

**BRIEF IN SUPPORT OF THE DIVISION’S MOTION  
FOR LEAVE TO FILE AN OPPOSITION BRIEF**

Respondent SBAM filed its Request for Interlocutory Review and Stay of Proceedings on April 29, 2015, pursuant to Rule 400 of the Commission’s Rules of Practice, 17 C.F.R. § 201.400. (SBAM’s Request for the Commission to Grant Interlocutory Review and to Stay the Proceedings, dated April 29, 2015 (“Petition”), at 1.) Rule 400 affords the Division no right to submit an opposition to a party’s petition. See Matter of Harding Advisory LLC, Admin. Proc. No. 3-15574, 2014 WL 988532, at \*1 n.1 (SEC March 14, 2014). However, SBAM’s petition provides few of the record facts that informed the Law Judge’s determination that SBAM’s counsel, Martin Kaplan, should be disqualified in order to preserve the integrity of the proceedings in this matter (the “Disqualification Order,” entered April 7, 2015). Accordingly, the Commission’s consideration of whether the petition satisfies Rule 400’s “extraordinary circumstances” test may be assisted by a more complete submission. The Division is prepared to submit a summary of the factual background, and any legal argument that the Commission may request, upon receiving permission.

**II.**

**BRIEF IN OPPOSITION TO SBAM’S MOTION TO STAY THE PROCEEDINGS**

With its petition under Rule 400, SBAM has also sought a stay of these proceedings in their entirety “pending the Commission’s consideration of SBAM’s request for interlocutory

review” of the Disqualification Order. (Petition at 4.) SBAM’s motion to stay is governed by Rule 401(a) and Rule 154. 17 C.F.R. §§ 201.401(a), 201.154. The Division opposes a stay, particularly of the proceedings against Respondents other than SBAM: SBAM’s co-owners, Steven Sands and Martin Sands (collectively, the “Sands”), and its former Chief Compliance Officer and Chief Operating Officer, Christopher Kelly (“Kelly”). No stay is necessary to preserve the rights of any party and it will serve only to delay the proceedings.

**A. No Stay Is Necessary as to Any Party**

While the Commission has granted interim stays pending consideration of interlocutory review “in the interest of maintaining the status quo,” no such stay is necessary here. John Thomas Capital Mgmt. Grp., No. 3-15225, 2013 WL 6021114 (S.E.C. Nov. 13, 2013); see also 17 C.F.R. § 201.161 (noting that the Commission may extend time limits “for good cause shown.”). In John Thomas Capital, the case cited by SBAM (Petition at 4 n.11), the Commission issued a stay where the hearing was 5 days away and the Commission had not yet had the opportunity to determine whether to hear the interlocutory review.

No such good cause is present here. In issuing the Disqualification Order, the Law Judge gave SBAM until June 8, 2015 – two months – to retain new counsel. (Disqualification Order at 7.) With no interim dates or hearing date yet set, the Law Judge has effectively already granted all of the parties a stay, preserving the *status quo* at least until June 8, 2015.<sup>1</sup>

**B. SBAM Has Not Made Any Showing of Why a Stay Is Appropriate as to Any Party**

SEC Rule of Practice 401(a) provides that a motion for stay to the Commission “shall state the reasons for the relief requested.” 17 C.F.R. § 201.401(a). SBAM’s motion provides no

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<sup>1</sup> Pending before the Law Judge are the fully briefed Motions by the Division and Kelly for Summary Disposition.

reason why a stay is appropriate as to the Sands or Kelly, and the reasons it offers for staying the proceedings against it are contrary to Commission authority directly on point.

**1. *SBAM Has No Constitutional Right to Counsel of Its Choosing***

To the extent that SBAM claims that a stay should be granted because, without a stay, its Constitutional “right to choose its counsel” will be infringed (Petition at 3), that claim is baseless. The Commission has held that a party has no such constitutional right in an administrative proceeding, under Due Process or otherwise. Matter of Trautman Wasserman & Co., No. 3-12559, 2007 WL 1892138, at \*4 (S.E.C. June 29, 2007) (“[R]espondents in Commission proceedings do not enjoy an absolute right to counsel of their original choosing when a conflict of interest with that attorney threatens the integrity of Commission processes.”).

**2. *SBAM Has Already Conceded that a Stay of the Proceedings as to the Sands and Kelly Is Not Necessary***

SBAM offers no reason at all for staying the proceedings against the Sands and Kelly, even if it were appropriate to stay the proceedings as to it. And given its position below – where it argued that severing SBAM from the proceedings against the Sands and Kelly was appropriate because the claims against them were distinct and segregable -- SBAM would be hard pressed to make any argument for a stay now. In its response to the Law Judge’s Order to Show Cause, SBAM argued that the Law Judge could cure whatever conflict the Court found by severing the proceedings against SBAM from the remaining Respondents. “SBAM submits that there is ‘good cause’ [pursuant to Rule of Practice 201(b)] for severance<sup>2</sup> because SBAM has acknowledged that the audited financials were distributed beyond the Custody Rule’s deadline.

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<sup>2</sup> The Commission may sever proceedings with respect to one or more parties upon a showing of good cause. 17 C.F.R. § 201.201(b). Further, under Rule of Practice 401(b), the Commission may grant a stay “in part.” 17 C.F.R. § 201.401(b).

The only outstanding issue as to SBAM is a penalty, if any.”<sup>3</sup> (Kaplan’s Response to the ALJ’s Order to Show Cause, submitted March 5, 2015, at 2 n.5; see also Affirmation of Martin H. Kaplan, sworn to March 5, 2015, ¶ 40 (“Any argument relating to allocating responsibility for compliance with the Custody Rule [as between the individual Respondents] is not a matter than involves SBAM[.]”).) Thus, SBAM has acknowledged that the case against the Sands and Kelly need not await the resolution of this or any other issue with respect to SBAM, and that no stay would be necessary or appropriate as to them.

Nor would SBAM be able to point to any prejudice if the proceedings against the individual Respondents were allowed to proceed. Because a corporate respondent can only act through its managers, whatever remedies should be imposed on SBAM as a result of its violations will necessarily turn on the conduct of the Sands and Kelly, Respondents whom Kaplan no longer represents. Matter of John Thomas Capital Mgmt. Grp. LLC, No. 3-15255, 2014 WL 5304908, at \*25 (Initial Decision Oct. 17, 2014), review granted, Rel. No. 3978, 2014 WL 6985130 (Dec. 11, 2014). There is no “good cause” to delay a determination of the Division’s claims of aiding and abetting SBAM’s violations by the Sands or Kelly. Thus, no stay of these proceedings should be granted against the individual Respondents.

The proceedings at hand should continue. This is a straight-forward and uncomplicated Custody Rule case – one in which the adviser has already conceded liability. The case can and should be decided without great delay. A stay as to all parties pending the Commission’s consideration of SBAM’s request for interlocutory review is not justified and will postpone resolution of the few remaining issues in the case – who is at fault for SBAM’s violations and

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<sup>3</sup> In fact, the Division has also sought a cease-and-desist order, if appropriate, and to rescind SBAM’s registration. But to the extent SBAM meant that all that remains to be decided are the appropriate sanctions, the Division and SBAM are in agreement.

what sanction, if any, is appropriate. Nothing in SBAM's submission is persuasive as to why resolution of those issues should be postponed – especially as to those parties who are unaffected by disqualification of SBAM's counsel.

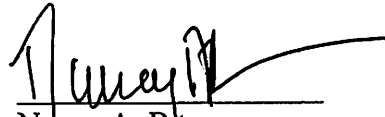
**CONCLUSION**

For the reasons stated above, the Division respectfully requests that SBAM's motion for stay of proceedings be denied.

Dated: New York, New York  
May 4, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT

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