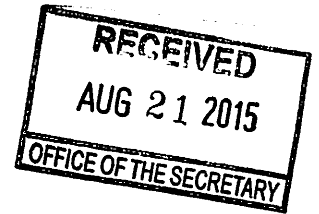
UNITED STATES OF AMERICA

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 SUPPLEMENT TO MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF POINTS IN SUPPORT THEREOF

Introduction

This will supplement Mr. Kelly's Motion for Summary Disposition and Memorandum of Points in Support Thereof ("Motion").

For ease of reference, and to avoid repeating information already contained in Mr. Kelly's prior filings ("Prior Filings"), certain defined terms herein will correspond to defined terms in such Prior Filings. The Prior Filings are incorporated by reference herein, and nothing in such Prior Filings is being retracted. In particular, while it is not possible to integrate all of the points in the Prior Filings into the points made below, and while such integration is not necessary, such prior points shall be presumed to be integrated as applicable.

As has been well-chronicled, the SEC kept Mr. Kelly in the dark about this matter for a lengthy period as the SEC limited itself to communicating with the Gusrae Firm. As this matter has progressed, however, and more information from the SEC has been revealed, and more information about SBAM and the Gusrae Firm and their tactics has been revealed, the case for granting Mr. Kelly's Motion has grown ever clearer and irrefutable.

History

Some years ago an SEC-registered investment advisor was subject to an SEC inquiry and struggling with the cease-and-desist order (the "C&D") the SEC was demanding. The matter had its genesis in actions and inactions from the 2004/2005 period, and related primarily to the failure to cooperate with the SEC in connection with the production of documents. With the documents apparently lost to history, and thus unable to be produced, the advisor eventually, with the advice of its counsel, resigned itself to the implementation of the C&D. But there was one last fight in the advisor.

For months and months the advisor was able to drag out the final implementation of the C&D arguing that a particular phrase had to be included. The requested addition of the phrase was consistent with how the advisor and its principals, and its counsel, had dealt with other regulatory challenges in the past. The phrase wasn't particularly long or complicated; in fact it was pretty simple. It reads as follows:

"...acting through employees and agents including compliance personnel..."

What did it all mean?: "*Blame the compliance guy.*" Even in signing the C&D, the firm and its principals, and its counsel, could always point to this phrase hidden in the C&D and say to anyone who might listen: "It was the compliance guy's fault." In time the SEC agreed to the change, even though the role of compliance personnel in the matter was mostly lost to history.

While Mr. Kelly has not been privy to the entire history of the firm in question, it is his understanding that the only compliance guy at the firm at any given time was a CCO. And while it was theoretically possible that the CCO had contributed to the non-cooperation at issue; it is also entirely possible that the CCO had nothing to do with the failure to cooperate. In any case, the SEC fell in line and the phrase demanded by the firm is now forever imbedded in the C&D.

The firm that is the subject of this story? Sands Brothers Asset Management. The principals? Martin and Steven Sands. And the counsel? The recently disqualified Gusrae Firm. The C&D? It goes without saying - the 2010 SEC Order, which is attached hereto as Appendix A (with certain phrases highlighted by underlining). The phrase quoted above can be found twice in Section 4 of the 2010 SEC Order.

"Blame the CCO." It's an old SBAM refrain, and the SEC fell for it in connection with the 2010 SEC Order; but there is no basis for the SEC to be hoodwinked again. "Blame the CCO." It has a nice ring to it, but not the ring of truth. With respect to the 2010 SEC Order it was arguably plausible, despite the lack of any evidence, that the CCO in 2004 and 2005 refused to turn over documents to the SEC. In this matter, however, there is no basis whatsoever for a "Blame the CCO" prosecution, as there is no basis for punishing Mr. Kelly for things that it was impossible for him to accomplish unilaterally.

Collusion

It should come as no surprise that the defense strategy of SBAM in this matter would echo the defense in the 2010 SEC Order matter given that the SBAM principals and initial SBAM counsel are one in the same in both matters. It should also come as no surprise, given the lengthy period during this matter that communications with respect to SBAM personnel were limited to communications between the Staff and the Gusrae Firm, that the Staff's arguments vis

a vis Mr. Kelly would echo the Gusrae Firm's own arguments vis a vis Mr. Kelly. While refusing to communicate with Mr. Kelly, the Staff was apparently listening carefully to the Gusrae Firm, even after the Gusrae Firm itself had advised the Staff of its conflict with Mr. Kelly.

It makes no sense that the Staff would have come up with some of its most extreme and unprecedented arguments on its own. After all, it makes no sense, for example, to claim that Mr. Kelly, a non-financial professional with no financial training, "was responsible for" the audit process. Such an assertion makes even less sense given the total lack of evidence that Mr. Kelly exerted control over the audit process. Acting responsibly in connection with the audit process does not evince control. Yet somehow the Staff was convinced that this baseless argument should be made.

The genesis of the core Staff arguments were apparently the fruits of the careful strategizing – i.e, collusion – that occurred between Martin and Steven Sands and the Gusrae Firm. It is incontrovertible that the Gusrae Firm had been representing the interests of Martin and Steven Sands for many years. The Gusrae Firm explicitly stated this in its filings relating to the disqualification issue, arguing that its longstanding relationship with SBAM and Martin and Steven Sands justified its continued representation of SBAM, even in the face of its breach of loyalty. It is incontrovertible that the Gusrae Firm represented SBAM and Martin and Steven Sands in connection with the 2010 SEC Order (*see the Service List to the 2010 SEC Order at Appendix A*). It is further well-chronicled that the Gusrae Firm was tapped to represent SBAM and Martin and Steven Sands in this matter.

One obvious starting point for collusion is that attorneys do not make final decisions on strategy. While attorneys may invent and suggest strategies, attorneys do not present defense

strategies to other parties such as the SEC without the permission of their clients. As the Motion to the Commission for Extension dated July 22, 2015 ("Motion for Extension") makes clear at the first paragraph on page 2 (*see Appendix B hereto*), the Gusrae Firm made it clear to the Staff that it would point the finger at Mr. Kelly in August 2013. So by some point in 2013 the strategy of pointing the finger at Mr. Kelly had already been well-developed. So by this point in 2013 Martin and Steven Sands and the Gusrae Firm had together decided on a strategy. This strategy was, of course, hidden from Mr. Kelly. While Mr. Kelly did have some brief conversations with Mr. Kaplan in 2013 and into 2014, at no time did Mr. Kaplan let on that his core strategy was another version of "Blame the CCO."

In fact, as already discussed in the Prior Filings (*see, e.g., the first full paragraph of Christopher Kelly's Reply to Kaplan's Response to the ALJ's Order to Show Cause*), Mr. Kaplan explicitly told Mr. Kelly that there was no conflict, and, as well-chronicled, the engagement letter between the Gusrae Firm and Mr. Kelly explicitly states in writing that there was no conflict. The Gusrae Firm never would have taken on Mr. Kelly as a client without the consent of Martin and Steven Sands given the possibility of a conflict with an employee, so it must be presumed that Martin and Steven Sands agreed to the strategy of the Gusrae Firm bringing on Mr. Kelly as a client even though a significant conflict actually existed.

It is entirely implausible that the Gusrae Firm acted unilaterally, as that in itself would be a breach of legal ethics. And it is entirely implausible that Martin and Steven Sands acted independently, as the Gusrae Firm had been retained specifically to work with them on this matter, just as the Gusrae Firm had admittedly worked closely with Martin and Steven Sands on so many other matters in the past. The "Blame the CCO" strategy is not of course the Gusrae

Firm's strategy. It is the clients' strategy – in this case the strategy of SBAM, Martin Sands and Steven Sands.

The only possible explanation is that the Gusrae Firm and its clients worked together on the strategy that is attempting to ensnare Mr. Kelly. The only possible explanation is that these parties "colluded."

A First

As their U-4s attest, Martin and Steven Sands and their affiliates have been chased by a fair number of regulators over the years including the following:

New York Stock Exchange

NASD

Securities and Exchange Commission

Connecticut Department of Banking

Wisconsin Department of Financial Institutions

Illinois Department of Financial and Professional Regulation

(*see the excerpts from Martin Sands' U-4 and Steven Sands' U-4s attached as Appendix C and D, respectively*).

To Mr. Kelly's knowledge, until this matter, not one of those regulators ever prosecuted a CCO associated with Martin or Steven Sands or any of their affiliates. This matter is apparently the first time any of these regulators ever went after a CCO. Mr. Kelly understands the frustration of the SEC with Martin and Steven Sands, but such frustration is a poor excuse for prosecuting an underling. The regulators previously used sound judgment in laying the blame where it lay, even in some of the cases where the Gusrae Firm attempted to expand the blame to

persons working for Martin and Steven Sands. But none of the regulators took the bait and the SEC should not do so here.

The regulatory claims are in addition to the many individual claims made against Martin and Steven Sands and their affiliates. For a full recitation of such claims see the complete U-4s of Martin and Steven Sands available on FINRA BrokerCheck.

"Shoulda"

It is difficult in some respects to understand the core argument of the Staff in this matter as it requires wading through a long list of patently reckless and dismissible assertions put forth by the Staff. Parsing through the mass of Staff assertions, however, the core argument appears to be found in the following passage, as quoted on pages 13-14 of Christopher Kelly's Reply ("Reply") to the Division of Enforcement's Opposition to Christopher Kelly's Motion for Summary Disposition:

"If that meant that SBAM needed additional resources, new auditors, new lawyers, new personnel or new policies, Kelly should have secured or sought to secure them."

This rather extreme passage, which is at odds with legal precedent, has been addressed in the Prior Filings, and it is not necessary to repeat everything said about the passage previously, but further comment is appropriate.

Let's call this the "Shoulda Argument." Mr. Kelly according to the Staff "shoulda" done this and "shoulda" done that.

There are a number of reasons why the "Shoulda Argument" fails in every respect:

FIRST, the argument is grossly unjust. The "shouldas" were offered over two years after the end of the final relevant fiscal year. It would be grossly unjust to retroactively apply these Staff <u>suggestions</u> to Mr. Kelly long after he had any chance of implementing them (*see however*

discussion at "THIRD" below). This is particularly true in this case where the SEC (i) was in regular contact with SBAM about the Custody Rule matters from at least 2009, and (ii) received four years of the C&W Compliance Reports from SBAM regarding its compliance program, with the C&W Compliance Reports including discussion of aspects of the Custody Rule (*see Section 14 of the 2010 SEC Order, attached as Appendix A*, which confirms the SEC's request for copies of the C&W Compliance Reports, which were duly provided (*see Exhibits C-I of Declaration of Janna J. Berke*)).

If the SEC wanted SBAM or any of its personnel to do something in particular, it had many years of chances to speak up. If the SEC wants to apply its suggestions going forward, that would make sense and be consistent with SEC practice; but applying the suggestions retroactively is indefensible.

SECOND, there is no law, no regulation and no guidance that supports the application of the Staff's particular suggestions (whether retroactive or not). While Mr. Kelly was given no chance to implement the particular Staff suggestions because they were offered years after the relevant period, it is true in any case that there is no law, regulation or guidance that would require SBAM, or any of its personnel, to implement any particular one of these suggestions. Further, there is no law, regulation or guidance that imposes an absolute obligation on a CCO to find a guaranteed solution to all challenges. As the literally hundreds of SEC enforcement cases where a CCO is not prosecuted attest (including cases involving the largest firms where no individuals at all are prosecuted), a CCO is expected to do his or her job, not to unilaterally find guaranteed solutions to all challenges.

THIRD, while SBAM did not implement the Staff's particular suggestions because they were offered years too late, as discussed in the Prior Filings (*see pages 13-15 of Mr. Kelly's*

Reply), Mr. Kelly did in fact take actions that were identical or comparable to the Staff's suggestions. This fact renders the "Shoulda Argument" meaningless. Mr. Kelly in significant part did what the Staff suggested years before the Staff's suggestions were offered.

FOURTH, to the extent the Staff argues that some of the Staff suggestions should have been implemented but were not, there will be no evidence whatsoever that the implementation of such suggestions would have made any difference. The SEC does not require advisor staff to have done something just because a Staff member suggests years later that it might or just maybe have been a good idea. With something as complicated as audits, which are under the purview of financial professionals, to a great degree in the hands of third parties, and subject to strict SEC accounting rules and oversight etc., it will be impossible for the Staff to prove that any particular suggestion was both required by law and would have made a material difference. To Mr. Kelly's knowledge, <u>none of the relevant Staff are qualified experts in audit matters, and appear to have limited experience with basic corporate matters</u>. This may explain in part some of the extreme and unsupported assertions made by the Staff in this matter, particularly as they relate to the mechanics of the audit process. There is no basis to find that the Staff's somewhat random suggestions were required and relevant and meaningful to the situation at SBAM. Any attempt to litigate the suggestions would necessarily involve a large dose of pure speculation as to the impact any particular suggestion might have theoretically had. Any attempt to litigate the suggestions would necessarily require the SEC to locate and provide a large number of expert witnesses who support the suggestions' theoretical efficacy .

FIFTH, some of the suggestions were <u>impossible</u> for Mr. Kelly to unilaterally implement. The Staff suggested hiring another accounting firm. Why the Staff believes that Mr. Kelly could have by himself substituted a new accounting firm for the existing accounting firm is a mystery.

Threaten the principals? Jump up and down and swear at the principals in French? Yell louder? Harass the principals hourly instead of regularly? Take actions that may be illegal or unethical? The SEC in its wisdom demands none of these things, and Mr. Kelly does not deserve prosecution based on the idea that his responsibilities were without limit or constraint.

Cases

Mr. Kelly acknowledges that there are few cases cited in his filings. There is a good reason for this however. There are simply no cases to Mr. Kelly's knowledge supporting the assertions of the Staff that are the core of its prosecution. In fact, there is no law, no regulation, no guidance and no case that supports any of the following Staff assertions (some assumptions are illustrative only):

- A CCO is an absolute guarantor of a firm's compliance.
- In particular, a CCO of an advisor is personally responsible for an advisor-managed fund's delivery of its audit within 120 days of the fiscal year end.
- All advisors, including fund-of-funds, subject to the audit delivery provision, must without exception deliver audits within 120 days of the fiscal year end; and all such advisors and their CCOs will be prosecuted if delivery is not made within the 120-day period.
- If a firm is (allegedly) guilty of a compliance violation, its CCO is personally responsible and must be, and will be, prosecuted, in all cases (including cases and settlements involving the largest firms).
- Even if the firm and its principals have been fully aware of the Custody Rule's elements for years, and even if such principals ignore such elements and/or fail to accomplish such

elements, a CCO, regardless of his actions in furtherance of the compliance program and Custody Rule, shall be personally responsible for the principals' shortcomings.

- Staff suggestions regarding the Custody Rule issued years after the relevant period, regardless of their relevancy or theoretical efficacy, should be applied retroactively to a CCO and support the prosecution of the CCO.
- The Staff's suggestions as to steps that might have been taken with respect to the Custody Rule in this matter are specifically imbedded in law.
- It is appropriate for Staff members who have no expertise in audits to make suggestions about how to handle audit challenges years after the relevant period.
- A CCO has corporate authority under state and federal law to retain third party vendors such as auditors without the knowledge or consent of the CEO.
- The SEC's articulation of the respective compliance responsibilities of management and the CEO in the Parallax Case is wrong as to this and all other matters (including the Parallax Case itself).
- Treating an attorney who did not represent a target as that target's attorney is ethical, and consistent with SEC policy and practice and the law.
- Providing information about a target to an attorney (i) who does not represent the target, (ii) who has already indicated to the SEC that he has a conflict with the target, and (iii) who passes on that information to an adverse party, is ethical, and consistent with SEC policy and practice and the law.
- Refusing to provide information to a target about the target (even though that information had already been provided to an attorney who has acknowledged a conflict with the target

(and who in turn passed on the information to an adverse party)), is ethical, and consistent with SEC policy and practice and the law.

- Insisting that a target deal with his employer's attorney, despite the target's resistance to the demand, and despite the target having advised that the employer's attorney was not the target's attorney, is ethical, and consistent with SEC policy and practice and the law.
- Interfering with a target's right to select his own attorney is ethical, and consistent with SEC policy and practice and the law.
- Refusing to speak to a target about the target's situation, including whether the target is even a target, is ethical, and consistent with SEC policy and practice and the law.
- Threatening to release confidential transcripts of a target's communications to an attorney with an acknowledged conflict with the target is ethical, and consistent with SEC policy and practice and the law.
- Delivering confidential transcripts of a target's communications to an attorney with an acknowledged conflict with the target is ethical, and consistent with SEC policy and practice and the law.
- Issuing a settlement offer with respect to a target, not to the target, but to the target employer's attorney, who has an acknowledged conflict with the target, is ethical, and consistent with SEC policy and practice and the law.
- Issuing a Wells Notice to a target without any prior substantive discussion with that target is ethical, and consistent with SEC policy and practice and the law.

Elephant

There is at least one elephant in the room that has been missed – the 2010 SEC Order. Presumably one core element of the Division's claim is that Mr. Kelly did not make the

principals of SBAM aware of the Custody Rule. While this claim is ridiculous on its face given the extent of the SBAM compliance program, which included annual compliance meetings and annual acknowledgements (*see e.g., Attachment I to Mr. Kelly's Motion*), this claim is eviscerated based on the incontrovertible existence of the 2010 SEC Order. The Staff (and SBAM and Martin and Steven Sands) cannot wish it away. The 2010 SEC Order is a fact.

The 2010 SEC Order provides on page 2 the following:

"...(ii) Section 206(4) of the Advisers Act and Rule 206(4)-2 governing the delivery of account statements and surprise examination requirements for certain SBAM funds..."

The 2010 SEC Order provides on page 3 the following:

"...have an independent public accountant conduct a surprise examination of the funds at least once a year."

The 2010 SEC Order provides on page 4 the following:

"In addition, the staff's exam revealed that the year-end December 31, 2007 financial statements for eight funds and four funds of funds managed by SBAM were not distributed to investors in accordance with the Rule."

If that isn't enough, the U-4s of both Martin and Steven Sands describe the 2010 SEC Order as follows (*the following example is from the Disclosure Event(s) section of Martin Sands' U-4 available on FINRA BrokerCheck*):

Sec IA Release 3099, October 22, 2010: the Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Martin Sands ("Sands" or "Respondent"). In anticipation of the institution of proceedings, Sands submitted an offer of

settlement ("Offer"), which the Commission has determined to accept. The Commission found that the proceedings stemmed from the failures of Sands' investment adviser firm registered with the Commission to comply with certain record-keeping and other provisions of the Advisers Act. In particular, the investment adviser violated (i) section 204 of the Advisers Act and Rule 204(2) governing the retention and production to the staff upon request of certain required documents and books and records; (ii) ***section 206(4) of the Advisers Act and Rule 206(4)-2 governing the delivery of account statements and surprise examination requirements for certain investment adviser funds****; and (iii) sections 204 and 207 of the Advisers Act and Rule 204-1 governing the disclosures and amendments to investment adviser's investment adviser registration statement on Form ADV.*

While plenty of other evidence has been provided regarding the significant visibility of the Custody Rule to SBAM and its principals (*see Prior Filings*), the inclusion of the elements of the Custody Rule in the 2010 SEC Order and Martin and Steven Sands' U-4s is absolute proof that they were perfectly aware of the Custody Rule elements.

The Custody Rule elements of course have a special flavor to them, including in particular that they cannot be unilaterally met by a CCO. In fact it is <u>impossible</u> for a CCO to cause the elements to be met without the cooperation of the firm's principals and other parties, including many parties over which a CCO has no supervisory authority whatsoever. Despite the Staff's belief to the contrary, a CCO has no independent and unilateral authority to retain an auditing firm for a surprise audit. The SEC's rules unequivocally do not give a CCO this power. This is not surprising because there is nothing in the SEC's rules that trumps centuries of corporate law giving CEOs management authority over their firms.

The SEC has made clear in the Parallax Case, for example, that it is the CCO's job to administer the compliance program, not to manage the advisor. This makes perfect sense in the context of centuries-old corporate practice that recognizes the management supremacy of CEOs. As well-chronicled in the Prior Filings, Martin and Steven Sands were the Co-CEOs of SBAM, as well as the Co-Founders, Co-Chairmen and Co-Senior Portfolio Managers. The SEC's longstanding position on CCO responsibility also makes sense because it would be negligent for the SEC to force investment advisory firms to be ruled by CCOs, who are lower in the corporate hierarchy than CEOs, and in most cases without the particular management and financial expertise to run investment advisory firms.

The obverse of the SEC-designated CCO responsibilities are the SEC-designated responsibilities of the CEOs. The Parallax Case articulates clearly and rationally that CEOs have ultimate responsibility for implementing the requirements of the firm's compliance program. This makes perfect sense because CEOs ultimately run advisory firms and only they have the ultimate authority to implement certain required measures. This dichotomy of responsibilities has been thought out carefully by the SEC, and this case is exactly the kind of case where the respective roles of the CEO and CCO should be respected, not trampled upon.

A CEO can retain an auditing firm for a surprise audit; a CCO cannot (without special delegated authority), and should not, given CCOs' lack of experience in hiring audit firms. A CEO can take all the actions necessary to complete a financial audit (subject to the behavior of third parties); a CCO cannot (without special delegated authority), and should not, given CCOs' typical dearth of financial/audit experience. Mr. Kelly never had any delegated authority in these realms. There is not a shred of evidence (emails, employment contracts, resolutions or otherwise) that Mr. Kelly had any such authority. To Martin and Steven Sands' credit they did

not grant Mr. Kelly any such authority. Assertions years after the fact that such authority was granted without a shred of evidence of such should be quickly dismissed as not credible. The Division has had plenty of time to produce some evidence of this delegation and it has provided nothing, because no such evidence exists. The fact that Mr. Kelly worked hard to move the audit process forward, as did every other professional at SBAM, is evidence of nothing more than that Mr. Kelly is a responsible guy.

The 2010 SEC Order, and the U-4 corollaries, are unequivocal evidence that Martin and Steven Sands knew exactly what they had to do under the Custody Rule. Their historical regulatory record is unequivocal evidence that they could be hardheaded when it came to regulatory matters. Mr. Kelly, and other parties, told Martin and Steven Sands exactly what had to be accomplished under the Custody Rule. That they ignored the waves of advice, or in the case of financial audits could not get the job done, should not implicate Mr. Kelly.

The SEC does not, and should not in this matter, prosecute a party who did his job, only to be let down by his principals. The SEC does not, and should not in this matter, prosecute a party whose purported responsibilities according to the Staff, were inconsistent with SEC precedent and <u>impossible</u> for that party to carry out.

Aid and Abet

Aiding and abetting requires "willful association" with the offense (assuming there is an offense). In Mr. Kelly's tenure at SBAM, as noted elsewhere in the Prior Filings, he was always on the opposite side of the alleged 120 Day Provision shortcomings, ensuring the relevant parties were aware of the Custody Rule requirements, ensuring the relevant parties acknowledged the Custody Rule, ensuring the SEC had notice of violations (*see the 2009 and 2010 productions noted in the Prior Filings*), cajoling and harassing Martin and Steven Sands (and the other

relevant parties) to comply, and otherwise contributing to progress on the audits to the extent Mr. Kelly could help the numerous parties involved in the process.

There is no basis whatsoever for "willfulness" in this matter, and no basis whatsoever even for "association". In fact, Mr. Kelly's actions with respect to the Custody Rule in the aggregate (acknowledged and highlighted by the Staff), are the polar opposite of willfulness. And without willfulness, there is no aiding and abetting. Mr. Kelly's actions are the polar opposite of association with SBAM and Martin and Steven Sands' and their actions, and inactions, vis a vis the Custody Rule. Without association, there is no aiding and abetting.

In no manner did Mr. Kelly "assist" SBAM or Martin and Steven Sands in the alleged violation, or "counsel", "command", "induce", "procure", "advise" or "cause" any violation, and there is no proof of any of these things. Mr. Kelly's actions were the opposite of these requisite actions. He in fact spent years counseling Martin and Steven Sands (and hence SBAM) to comply. His demands to comply were in essence <u>commands to comply</u>. He did not advise or cause any violation, nor did he procure or induce any violation.

The aiding and abetting claim must be supported with some evidence of collusion or coordination, but as this process has clearly revealed, there has been nothing but antagonism directed at Mr. Kelly by SBAM and Martin and Steven Sands, combined with their unsavory collusion with the Gusrae Firm. With aiding and abetting there must be some evidence of a co-conspiracy. But there is none, other than the conspiracy among SBAM, Martin and Steven Sands, and the Gusrae Firm, against Mr. Kelly. That conspiracy is determinative evidence that Mr. Kelly was and is at odds with those parties, not in cahoots. He never supported any of the actions, inactions or other behavior of those parties that (allegedly) undermined compliance with the Custody Rule.

How does signing audit engagement letters when Martin and Steven Sands refuse to do so support aiding and abetting? It doesn't of course; in fact Mr. Kelly's responsible actions show exactly the opposite. Is the Staff correct that signing audit representation letters somehow supports aiding and abetting? Of course not. That action also supports exactly the opposite. Haranguing Martin and Steven Sands to meet the requirements of the Custody Rule? The same. There is nothing in fact that supports an aiding and abetting claim. And placing Mr. Kelly in the same category as Martin and Steven Sands is indicative of the most abysmal thinking, at its worst.

The fact that the parties with all necessary information about the Custody Rule did not meet the 120-day deadline does not mean that Mr. Kelly "aided and abetted" by the mere fact of the other parties' (alleged) offense. It is not enough for the Staff to merely allege aiding and abetting. It is not enough for the Staff to throw around the "aiding and abetting" phrase loosely. Aiding and abetting requires clear proof of specific kinds of actions as discussed above and that proof is wholly absent in this matter.

An aiding and abetting charge against Mr. Kelly in this case is clearly inappropriate and unsupported. Compliance personnel have supervisory responsibilities, but they are not required to do the jobs of those supervised, and there is no legal basis for finding that compliance personnel are required to do the jobs of Founders, Chairmen, CEOs or Portfolio Managers.

The clear lack of proof against Mr. Kelly is in stark contrast to the proof provided against Martin and Steven Sands by the Staff. As noted in the Prior Filings (*see in particular pages 12-14 of Mr. Kelly's Opposition*), and in the Division's own filings, Martin and Steven Sands took, or did not take, specific actions that clearly support an aiding and abetting charge against them.

In contrast to Mr. Kelly, who was an underling, with no management or economic control of SBAM, Martin and Steven Sands were (and presumably continue to be) essentially indistinguishable from SBAM. They have run the firm from its beginnings, and family trusts are the technical owners of SBAM. As noted in the Prior Filings, during Mr. Kelly's tenure Martin Sands has been in regular contact with the Trustee of the family trusts that own SBAM. As the expression goes, Martin and Steven Sands are SBAM.

Conclusion

For more than two years the only substantive discussions by the Staff on this matter outside the SEC were with the Gusrae Firm. If the Staff had spent just a few minutes in substantive discussions with Mr. Kelly prior to sending him a Wells Notice and prior to initiating the enforcement action against him the Staff never would have made entirely unsupported and reckless assertions such as that he "was responsible for the audit process" or that he "controlled SBAM." As the Staff itself pointed out (*see footnote 1 on page 3 of the Division's Opposition to SBAM's Request for Certification and Stay of Proceedings*), Martin and Steven Sands employed their mother at SBAM. Does the Staff really believe that Mr. Kelly had anything to do with the decision to employ Martin and Steven Sands' mom? Even if Mr. Kelly had "controlled SBAM," which he didn't, he would never have even employed his own mom.

As the Staff also pointed out (*Ibid.*), Martin and Steven Sands also employed a driver. Does the Staff really believe that Mr. Kelly had anything to do with the decision to employ a driver? Is it any coincidence that that driver was not made available to Mr. Kelly, and that the driver was made available to Martin and Steven Sands and their families? Is this consistent with Mr. Kelly controlling SBAM? Of course not.

Does the Staff really believe that a guy whose salary was [redacted] a year [redacted] controlled the firm? Does the Staff really believe that a guy whose salary hasn't been paid by SBAM in over a year, and whose 2013 bonus is still outstanding, controlled SBAM?

Does the Staff really believe that a guy who has no formal financial experience, working for principals with a combined 60 years or so of high level Wall Street financial experience, "was responsible for" the audit process?

Does the Staff really believe that a guy who has no formal financial experience "was responsible for" the audit process where the principals had retained an outside financial firm to manage the audit process (among other financial tasks) for approximately $300,000 a year? (*see Attachment I to the Affidavit in Support of Mr. Kelly's Opposition, which show GFS's $286,959.84 payment in 2010. Payments in later years were materially larger as the assets of the core fund increased.*).

Does the Staff really believe that it is right to prosecute a guy because his principals did not do what the SEC itself, with all of its power and authority (*see e.g., the 2010 SEC Order*), could not get the principals to do? Should the failures of the SEC itself be projected onto Mr. Kelly? Of course not.

Does the Staff really believe that a CCO should be prosecuted because the firm's principals are hardheaded about SEC directives?

Does the Staff really believe after scores of Martin and Steven Sands' dust ups with regulators that all of a sudden in this case it was the fault of the underling with a spotless regulatory record?

It doesn't take a rocket scientist, as the expression goes, to understand that Mr. Kelly didn't control SBAM or the audit process. But if you do no due diligence, and for a couple of years listen to and give credence to an adverse advocate (i.e., Mr. Kaplan) , who has an acknowledged conflict with Mr. Kelly, without checking with Mr. Kelly, you end up with assertions that are reckless, patently unsupported and, to match the assertions somewhat more bluntly to reality, frankly ridiculous.

This process has been illuminating, and everything points to a dismissal forthwith of the claims against Mr. Kelly. The process against Mr. Kelly has been a misguided mission from the beginning, and has been a tragedy for Mr. Kelly and his family who have already suffered greatly, in significant part as a result of the Staff's misconduct.

The course of this matter can be neatly summed up in the words of the SEC itself in the Motion for Extension. As the first paragraph of the second page recounts:

On April 7, Judge Elliot disqualified Kaplan and Gusrae Kaplan Nusbaum PLLC from representing SBAM in this proceeding, based on findings that: Kaplan had taken a position materially adverse to his former client Kelly in this proceeding; Kaplan had formulated a defense to pin the blame on Kelly, ***and even conveyed his view about Kelly's responsibility to the Division in August 2013****, well before he executed an engagement letter with Kelly; and any purported conflict waiver in that letter was invalid because Kaplan knew at the time he executed the engagement letter that there was a conflict of interest, and he did not disclose that conflict to Kelly. Sands Bros. Asset Mgmt., LLC, Admin. Proc. Rulings Release No. 2503, 2015 SEC LEXIS 1250.*

That the Staff would be told of the Gusrae Firm's perfidy in August 2013 and not tell Mr. Kelly is inexcusable. That the Staff would then insist that Mr. Kelly deal with the Gusrae Firm

even in the face of the conflict, while withholding information about the conflict from Mr. Kelly, is unconscionable. That the Staff would make the Gusrae Firm's obviously self-serving and entirely unsupported storyline a basis for the prosecution of Mr. Kelly is negligent in the extreme.

The Staff of course is not the SEC. In fact, the Staff's assertions in this matter are materially inconsistent with the SEC's longstanding views of CCO responsibilities, and conversely the responsibilities of principals. The Staff's gross misconduct in this matter should be a big clue that its legal judgement is impaired, and unworthy of the SEC. The parade of reckless and unsupported assertions by the Staff should be a big clue that its legal judgement is, in fact, erroneous in the extreme.

One thing this case is not about is the relative legal resources employed by the parties. Mr. Kelly is massively outgunned – the SEC made sure of that when it passed on confidential communications to a party the SEC knew first hand had a conflict with Mr. Kelly – but the relative resources of the parties should not drive the outcome.

While it is fortunate that the SEC's Q&A Exemption and other factors cited by Mr. Kelly in the Prior Filings provide a clear basis for the dismissal of this matter as to him, those other factors while available and determinative are not necessary for such a dismissal order. Mr. Kelly did his job properly establishing and administering the compliance program and that alone is a basis for dismissing the case against him. The Division's own filings, recounting Mr. Kelly's efforts, provide further clear evidence that the Motion should be granted. SBAM's and Martin and Steven Sands' defense (in whatever form it may finally be articulated), vis a vis Mr. Kelly, is transparently not credible.

In the end Mr. Kelly did the right things, but he could not do the improbable, or impossible. In the end he could not be expected to accomplish more than the SEC, which itself had applied its mighty resources to Martin and Steven Sands. In the end he could not be expected to do more than the SEC asks of a CCO.

The Staff has now had plenty of time to find factual support for its assertions and has come up empty handed, because no such factual support exists. The Staff has now had plenty of time to find legal support for its legal claims and has likewise come up empty handed, because no such legal support exists.

For the reasons set forth above, Mr. Kelly respectfully requests that the Court grant his Motion for Summary Disposition, and enter an order granting such relief.

Dated: August 16, 2015

Respectfully submitted,

Christopher Kelly (917) 414-9704
16 Dearfield Lane
Greenwich, CT 06831
Pro se

APPENDIX A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3099 / October 22, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-14097

In the Matter of **SANDS BROTHERS ASSET MANAGEMENT LLC, STEVEN SANDS, AND MARTIN SANDS,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act") against Sands Brothers Asset Management LLC ("SBAM"), Steven Sands ("S. Sands"), and Martin Sands ("M. Sands").

II.

In anticipation of the institution of these proceedings, SBAM, S. Sands, and M. Sands have submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, SBAM, S. Sands, and M. Sands consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f), And 203(k) of the Investment Advisers Act of 1940, as set forth below.

III.

On the basis of this Order and SBAM, S. Sands, and M. Sands' Offer, the Commission finds that:

RESPONDENTS

1. **SBAM**, a New York limited liability company formed in June 1998, has been registered with the Commission as an investment adviser since July 1998. SBAM maintains offices in New York, New York and provides portfolio management and investment advisory services to its clients, among which are a number of funds organized as limited liability companies or limited partnerships. According to its Form ADV filed on March 22, 2010, SBAM has $95,340,474 in assets under management.

2. **S. Sands**, age 51, resides in Locust Valley, New York. He is a direct owner and currently serves as co-chairman of Sands Brothers Asset Management Ltd., the manager of SBAM. S. Sands is also a founder, partner and senior portfolio manager of SBAM. S. Sands is also currently employed as a registered representative at Lane Capital Markets LLC, a broker-dealer located in Greenwich, CT, and was formerly employed as a registered representative at Laidlaw & Company (UK) Ltd., a broker-dealer with its main office in London, England. He maintains Series 7, 24, and 63 licenses.

3. **M. Sands**, age 49, resides in Greenwich, Connecticut. He is a direct owner and currently serves as co-chairman of Sands Brothers Asset Management Ltd., the manager of SBAM. M. Sands is also a founder, partner and senior portfolio manager of SBAM. M. Sands is also currently employed as a registered representative at Lane Capital Markets LLC and was also formerly employed as a registered representative at Laidlaw & Company (UK) Ltd. He maintains Series 3, 7, 8, 24 and 63 licenses.

FACTS

4. These proceedings stem from the failures of SBAM, an investment adviser registered with the Commission, to comply with certain record-keeping and other provisions of the Advisers Act. In particular, SBAM violated (i) Section 204 of the Advisers Act and Rule 204(2) governing the retention and production to the staff upon request of certain required documents and books and records; (ii) Section 206(4) of the Advisers Act and Rule 206(4)-2 governing the delivery of account statements and surprise examination requirements for certain SBAM funds; and (iii) Sections 204 and 207 of the Advisers Act and Rule 204-1 governing the disclosures and amendments to SBAM's investment adviser registration statement on Form ADV. M. Sands and S. Sands, sometimes acting through employees and agents including compliance personnel, were principal contact persons for SBAM in responding to the Commission staff's inquiries and otherwise communicating with the staff during examinations of SBAM. As the lead principals of SBAM, S. Sands and M. Sands, acting through employees and agents including compliance personnel, were also responsible for ensuring that SBAM's filings on Form ADV were accurate and up to date.

Advisers Act Books And Records Deficiencies

5. Section 204 of the Advisers Act provides that every investment adviser who makes use of the mails or interstate commerce in connection with its advisory business shall make and keep for prescribed periods those records that the Commission, by rule, may prescribe as necessary, and that all records are "subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors." Rule 204-2(a) sets forth certain categories of books and records that registered investment advisers are required to "make and keep true, accurate and current" with respect to their investment advisory business. Rule 204-2(b) sets forth categories of additional documents that must be maintained by registered investment advisers that have custody of client assets.

6. SBAM failed to maintain or provide to the staff, among other things, the following documents relating to one or more of its advisory clients: bank and brokerage account opening documents for certain advisory clients, as required by Rule 204-2(a)(10); bank account statements for certain advisory clients, as required by Rule 204-2(a)(7); brokerage account statements or similar records, as required by Rules 204-2(b)(3) and (4); certain client advisory contracts, as required by Rule 204-2(a)(10); order memoranda detailing each purchase, sale, receipt or delivery of securities on behalf of certain advisory clients, as required by Rule 204-2(a)(3); securities transaction confirmations for certain advisory clients, as required by Rule 204-2(b)(3); and documentation of deposits into and payments out of certain client accounts, as required by Rules 204-2(b)(1) and (2).

Advisers Act Custody Rule Deficiencies

7. SBAM failed to comply with the provisions of Section 206(4) of the Advisers Act and Rule 206(4)-2(a) thereunder, which, during the relevant period,[1] imposed on registered investment advisers, like SBAM, that have custody of clients' funds or securities certain requirements concerning the distribution of client account statements and surprise examinations for certain funds. Rule 206(4)-2(a)(3) required investment advisers with custody of client assets (i) to have a reasonable belief that a qualified custodian holding the client assets, such as a bank or a broker-dealer, was providing quarterly account statements directly to the clients or (ii) to send quarterly account statements directly to their clients and have an independent public accountant conduct a surprise examination of the funds at least once a year.

8. During the relevant period, Rule 206(4)-2(b)(3) provided an exception to the requirements of Rule 206(4)-2(a)(3) if the client is organized as a limited partnership, limited liability company or similar pooled investment vehicle. In such cases, the adviser need not comply with Rule 206(4)-2(a)(3) provided that the funds' financial statements are subject to an annual audit by an independent accountant, such financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), and the financial statements are distributed to investors in accordance with the Rule.

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[1] Rule 206(4)-2 of the Advisers Act was amended on December 30, 2009.

9. With respect to several SBAM funds organized as limited partnerships or limited liability companies, SBAM improperly relied on the custody rule exception that was, at the time, set forth at Rule 206(4)-2(b)(3). The staff's exam revealed that the year-end December 31, 2003 financial statements for nine funds managed by SBAM came with the auditor's disclaimer of opinion. The auditor's disclaimer of opinion states that the auditor does not express an opinion on the financial statements. According to AU 508 paragraph 61, the auditor disclaims his or her opinion "whenever he or she is unable to form or has not formed an opinion as to the fairness of presentation of the financial statements in conformity with generally accepted accounting principles." Footnote 21 to paragraph 63 of AU 508 also notes that when an opinion is disclaimed, the auditor's report states that the auditor was "engaged to audit" because the auditor was not able to perform an audit in accordance with U.S. generally accepted auditing standards ("GAAS"). Accordingly, a disclaimer of opinion does not constitute the performance of an audit in accordance with GAAS and, therefore, fails to satisfy the custody rule exception requirements that the financial statements be prepared in accordance with GAAP and that an audit be performed in accordance with GAAS. In addition, the staff's exam revealed that the year-end December 31, 2007 financial statements for eight funds and four funds of funds managed by SBAM were not distributed to investors in accordance with the Rule. Because SBAM did not satisfy the exception in Rule 206(4)-2(b)(3), it was obligated to comply with Rule 206(4)-2(a)(3), which it failed to do.

Advisers Act Form ADV Deficiencies

10. Section 203(c) of the Advisers Act requires registered investment advisers, like SBAM, to file with the Commission, and Rule 204-1 requires them to periodically update, their registration statement on Form ADV. SBAM's annual and periodic investment adviser registration statements on Form ADV were deficient in several respects. For example, SBAM's Form ADV for the year ended December 31, 2003, which was filed with the Commission on March 17, 2004, contained several material misstatements and inaccuracies. First, the Form ADV incorrectly stated that SBAM did not maintain custody of client assets. SBAM did maintain custody of client assets due to its principals' direct access to such assets. Second, the Form ADV incorrectly stated that the owners of SBAM were the "Loius Trust" and the "Sunquam Trust." Documents provided to the staff show that the owners of SBAM were the "Julios Trust" and the "Targhee Trust."

11. SBAM's subsequent Forms ADV repeated certain of these misstatements. On May 9, 2008 and June 12, 2008, SBAM filed amended Forms ADV that again incorrectly stated that SBAM did not have custody of client assets.

12. SBAM also failed to file its annual amendment to Form ADV for the year ended December 31, 2004. The amended Form ADV was required to be filed within 90 days of the close of the year and was required to include such material information as the amount of assets under management and the number of client accounts for the year. However, SBAM failed to file any amended Form ADV for the 2004 reporting period.

VIOLATIONS

13. As a result of the conduct described above,

(a) SBAM willfully violated Section 204 of the Advisers Act and Rules 204-2(a) and 204-2(b) thereunder, which, among other things, impose upon every registered investment adviser the duty to make, keep and furnish copies of certain books and records as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors;

(b) SBAM willfully violated Section 204 of the Advisers Act and Rule 204-1, which require a registered investment adviser to amend its Form ADV at least annually, within 90 days of the end of its fiscal year or more frequently, if, among other things, certain specified information becomes inaccurate in any way, or where the investment adviser's successions, participation or interest in client transactions, information regarding the adviser's control persons or its other business activities, or information provided in its brochure becomes materially inaccurate;

(c) SBAM willfully violated Section 206(4) and Rule 206(4)-2 thereunder, which, among other things, impose on investment advisers that have custody of client funds or securities certain requirements with respect to the preparation and disseminations of client account statements and surprise examinations for certain funds;

(d) SBAM willfully violated Section 207 of the Advisers Act, which prohibits any person from willfully making any untrue statement of a material fact in any registration application or report, such as Form ADV, filed with the Commission under Section 203 or Section 204 of the Advisers Act, or willfully omitting in any such application or report any material fact which is required to be stated therein; and

(e) S. Sands and M. Sands willfully aided and abetted and caused SBAM's violations of Sections 204, 206(4), and 207 of the Advisers Act Rules 204-1, 204-2(a) and (b) and 206(4)-2 thereunder.

UNDERTAKINGS

Respondent SBAM has undertaken to:

14. Provide to the Commission staff copies of all periodic written reports prepared by the third-party independent compliance consultant retained by SBAM in connection with its September 9, 2009 Stipulation and Agreement, Docket No. RCF-2007-7093-S, with the State of Connecticut, Department of Banking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondents' Offer.

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. SBAM, S. Sands and M. Sands shall cease and desist from committing or causing any violations and any future violations of Sections 204, 206(4), and 207 of the Advisers Act and Rules 204-1, 204-2(a) and (b), and 206(4)-2 thereunder.

B. SBAM, S. Sands, and M. Sands are censured; and

C. SBAM shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $60,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the payee as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Karen Lee, Staff Attorney, Securities and Exchange Commission, Division of Enforcement, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent SBAM shall comply with the undertakings set forth in Section III, paragraph 14, above.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order"), on the Respondents and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Joseph Dever, Esq.
New York Regional Office
Securities and Exchange Commission
3 World Financial Center – Room 400
New York, NY 10281

Sands Brothers Asset Management LLC
c/o Martin H. Kaplan, Esq.
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street
New York, NY 10005

Mr. Steven Sands
c/o Martin H. Kaplan, Esq.
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street
New York, NY 10005

Mr. Martin Sands
c/o Martin H. Kaplan, Esq.
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street
New York, NY 10005

Martin H. Kaplan, Esq.
Gusrae, Kaplan, Bruno & Nusbaum PLLC
120 Wall Street
New York, NY 10005
(counsel for Sands Brothers Asset Management LLC, Steven Sands and Martin Sands)

APPENDIX B

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2960 / July 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16223

In the Matter of SANDS BROTHERS ASSET MANAGEMENT, LLC, STEVEN SANDS, MARTIN SANDS, and CHRISTOPHER KELLY	MOTION TO THE COMMISSION FOR EXTENSION

The Securities and Exchange Commission commenced this proceeding on October 29, 2014. The Order Instituting Proceedings (OIP) alleges that: Sands Brothers Asset Management, LLC (SBAM), a registered investment adviser, willfully violated Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2 thereunder (custody rule) because, for fiscal years 2010 to 2012, it failed to undergo surprise audits or timely distribute audited financial statements to investors of pooled investment vehicles managed by SBAM as an alternative means of compliance with the custody rule; and the other Respondents willfully aided, abetted, and caused SBAM's violations. OIP at 1-2, 5-7. As service of the OIP was accomplished by November 3, 2014, the Initial Decision is due August 30, 2015.

In accordance with Rule of Practice 360(a)(3), I have determined, after consulting with the presiding law judge Cameron Elliot, that it will not be possible to issue the Initial Decision in the time specified. The parties completed briefing on summary dispositions motions by February 24, 2015. However, due to concerns related to the fairness and integrity of the proceeding, deciding such motions has been delayed and no hearing is currently scheduled.

On February 25, Judge Elliot ordered Martin H. Kaplan, Esq., of Gusrae Kaplan Nusbaum PLLC, to show cause why he should not be disqualified as SBAM's counsel. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2349, 2015 SEC LEXIS 702. Judge Elliot raised this issue because, among other reasons, Kaplan previously represented Respondent Christopher Kelly during at least part of the Division of Enforcement's investigation, but then asserted as SBAM's main defense to the Division's motion for summary disposition that it was "Kelly's failure to comport SBAM's conduct with the Custody Rule" which prevented SBAM's compliance. *Id.* at *2-5 (quoting SBAM Opp. at 6).

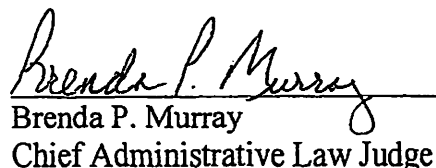
On April 7, Judge Elliot disqualified Kaplan and Gusrae Kaplan Nusbaum PLLC from representing SBAM in this proceeding, based on findings that: Kaplan had taken a position materially adverse to his former client Kelly in this proceeding; Kaplan had formulated a defense to pin the blame on Kelly, and even conveyed his view about Kelly's responsibility to the Division in August 2013, well before he executed an engagement letter with Kelly; and any purported conflict waiver in that letter was invalid because Kaplan knew at the time he executed the engagement letter that there was a conflict of interest, and he did not disclose that conflict to Kelly. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2503, 2015 SEC LEXIS 1250.

On April 22, Judge Elliot denied requests to certify the April 7 Disqualification Order to the Commission for interlocutory review. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2566, 2015 SEC LEXIS 1485. SBAM then sought interlocutory review directly from the Commission, which the Commission denied on May 13. *Sands Bros. Asset Mgmt., LLC*, Advisers Act Release No. 4083, 2015 SEC LEXIS 1931.

Thereafter, SBAM's new counsel filed a notice of appearance. On June 17, Judge Elliot held a prehearing conference to address the status of the proceeding. Judge Elliot denied SBAM's motion for a ninety-day stay, but granted the parties until August 21 to file additional briefs; granted SBAM leave to move for summary disposition; and directed SBAM's new counsel to identify the extent to which new counsel agrees or disagrees with statements or arguments made by SBAM's former counsel. *Sands Bros. Asset Mgmt., LLC*, Admin. Proc. Rulings Release No. 2829, 2015 SEC LEXIS 2444 (June 17, 2015). After completion of such briefing, Judge Elliot will then be in a position to decide whether to permit further briefing and/or whether and when to set a hearing. *Id.*

If a hearing is warranted this proceeding, it will be difficult to schedule one earlier than November based on Respondents' stated availability and Judge Elliot's current hearing schedule. And if there is a hearing, sufficient time should be allowed for the filing of post-hearing briefs, review of the record, and preparation of an Initial Decision. *See* 17 C.F.R. § 201.360(a)(2).

For these reasons, I request a six-month extension of the Initial Decision due date, to February 29, 2016.



Brenda P. Murray
Chief Administrative Law Judge

APPENDIX C

					11/30/2004 FINRA				
					U4-AMENDMENT Customer Complaint 04/26/2005 LAIDLAW & COMPANY (UK) LTD. (119037)	12/31/2003	04/26/2005	09/09/2004	1
Customer Complaint (1293646)	Yes	Yes		No	U4-AMENDMENT Customer Complaint 02/23/2006 LAIDLAW & COMPANY (UK) LTD. (119037)	10/01/2004	02/23/2006	02/01/2006	1
Regulatory Action (119068)	Yes	Yes		No	U6-CONVERSION Regulatory Action 07/07/1999 WI	05/03/1991	07/07/1999	05/21/1991	
					U4-AMENDMENT Regulatory Action 01/09/2002 FINRA	05/03/1991	07/06/1999	05/21/1991	2 2
Regulatory Action (920038)	Yes	Yes		No	U6-REGINDVL Regulatory Action 11/27/2000 NYSE	08/26/2000	09/08/2000	11/17/2000	
					U4-AMENDMENT Regulatory Action 11/06/2000 (26816)	08/26/2000	10/13/2000	10/17/2000	2 2
Regulatory Action (1164079)	Yes	Yes		No	U6-REGINDVL Regulatory Action 02/20/2004 NYSE	10/14/2003	10/21/2003	02/06/2004	
					U4-AMENDMENT Regulatory Action 03/08/2004 (26816)	10/14/2003	11/13/2003	02/06/2004	1 (

Regulatory Action (1219881)	Yes	Yes		No	U6-REGINDVL Regulatory Action 05/20/2005 IL	09/08/2004	09/24/2004	05/16/2005	
					U4-AMENDMENT Regulatory Action 06/02/2005 LAIDLAW & COMPANY (UK) LTD. (119037)	09/08/2004	04/25/2005	05/16/2005	1
Regulatory Action (1229133)	Yes	Yes		No	U6-REGINDVL Regulatory Action 11/29/2004 CT	11/29/2004	11/29/2004	11/29/2004	
					U4-AMENDMENT Regulatory Action 04/25/2005 LAIDLAW & COMPANY (UK) LTD. (119037)	11/29/2004	04/25/2005	11/29/2004	1

APPENDIX D

NASD

Allegations

NASD RULES 1017(A)3, 1021, 2110, NASD INTERPRETIVE MATERIAL -1000-1 - SANDS, ACTING ON BEHALF OF THE FIRM DID NOT FILE A RULE 1017 APPLICATION WITH NASD SEEKING APPROVAL FOR THE TRANSFER OF CUSTOMER ACCOUNTS; PERMITTED AN INDIVIDUAL TO ACTIVELY ENGAGE IN ACTIVITIES AT THE FIRM THAT REQUIRED REGISTRATION WHEN INDIVIDUAL WAS NOT SO REGISTERED; WILLFULLY FAILED TO AMEND HIS FORM U4 TO DISCLOSE A MATERIAL FACT IN CONTRAVENTION OF ARTICLE V, SECTION 2 OF NASD'S BY-LAWS.

Resolution

Decision & Order of Offer of Settlement

Sanctions

Civil and Administrative Penalty(ies)/Fine(s)

Sanctions

Suspension

Broker Comment

MR. SANDS BELIEVES THAT THIS WAS A CLERICAL ERROR OVER WHICH HE HAD NO CONTROL SINCE HE WAS NOT ACTING IN A SUPERVISORY CAPACITY AT THE TIME AND BELIEVES THAT THOSE WHO WERE RESPONSIBLE WERE DROPPED FROM THE FINDING.