

**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**

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<b>In the Matter of</b>	:	<b>ORDER INSTITUTING ADMINISTRATIVE</b>
	:	<b>AND CEASE-AND-DESIST PROCEEDINGS,</b>
	:	<b>MAKING FINDINGS, AND IMPOSING</b>
<b>SANDS BROTHERS ASSET</b>	:	<b>REMEDIAL SANCTIONS AND A CEASE-</b>
<b>MANAGEMENT LLC,</b>	:	<b>AND-DESIST ORDER PURSUANT TO</b>
<b>STEVEN SANDS, AND</b>	:	<b>SECTIONS 203(e), 203(f), AND 203(k) OF</b>
<b>MARTIN SANDS,</b>	:	<b>THE INVESTMENT ADVISERS ACT OF</b>
	:	<b>1940</b>
<b>Respondents.</b>	:	
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**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,<sup>1</sup> 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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<sup>1</sup> 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

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