

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9597 / June 9, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72352 / June 9, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3847 / June 9, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31073 / June 9, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS 15(b),
15C(c) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940, AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b), 15C(c) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Dennis J. Malouf (“Malouf” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This proceeding arises from a fraudulent scheme to secretly pay trading commissions to Dennis Malouf, the former chief executive officer and majority owner of UASNM, Inc. (“UASNM”), a registered investment adviser. Between 2008 and 2011, Malouf directed UASNM client bond trades to a branch office of a broker-dealer (“Broker-Dealer”) that he had formerly owned. The buyer and new manager of that branch (“Branch Manager”) and Malouf had entered into a secret oral agreement that Branch Manager would forward to Malouf substantially all of the commissions from UASNM’s bond trading, which netted Malouf approximately \$1.1 million between 2008 and 2011. This commission arrangement, and the resulting material conflict of interest, were not disclosed to UASNM’s clients.

2. Malouf’s fraudulent commission scheme resulted in several other violations of the federal securities laws. First, Malouf caused UASNM’s website to make false or misleading statements regarding the firm’s purported impartial investment advice, best execution, and fee structure. Second, Malouf failed to seek best execution on client bond trades by directing the vast majority of these trades to Broker-Dealer without obtaining competing bids from other broker-dealers. Finally, Malouf acted as an unregistered broker-dealer by receiving approximately \$1.1 million in commission payments from Branch Manager for directing his clients’ bond trades to Broker-Dealer.

B. RESPONDENT

3. **Dennis J. Malouf**, age 54, is a resident of Albuquerque, New Mexico. Malouf was the chief executive officer and majority owner of UASNM from September 2004 until May 2011, when he was terminated. He is currently the sole owner and president of an investment adviser registered with the State of New Mexico.

C. OTHER RELEVANT ENTITY

4. **UASNM, Inc.** is a New Mexico corporation located in Albuquerque, New Mexico, that registered as an investment adviser with the Commission on September 4, 2004. UASNM provides discretionary advisory services primarily to individuals, charitable organizations, and employee benefit plans. UASNM’s most recent Form ADV reported approximately \$275 million in assets under management. UASNM is named as a respondent in a separate administrative proceeding relating to the misconduct described in this Order.

D. FACTS

Relationship between UASNM and a Branch Office of Broker-Dealer

5. In 2004, Malouf purchased a majority interest in UASNM and registered the firm as an investment adviser with the Commission. At that time, Malouf was also associated as a registered representative and owned a branch office of Broker-Dealer. The Broker-Dealer branch owned by Malouf sub-leased and occupied a portion of UASNM's office space.

6. In 2007, Broker-Dealer became concerned about potential conflicts of interest and supervision risks arising from Malouf's work at UASNM, and asked him to choose between associating with UASNM or Broker-Dealer. Malouf decided to continue his advisory work at UASNM, and to terminate his association as a registered representative and owner of a branch office of Broker-Dealer.

7. As a result, at the end of 2007, Malouf terminated his registration with Broker-Dealer, and he transferred his Broker-Dealer customers either to UASNM, or to the new Branch Manager. Branch Manager continued to operate the Broker-Dealer office within UASNM's office space until June 2011, when UASNM required Branch Manager to find a new office location as a result of his involvement in the fraudulent commission scheme.

The Branch Manager Secretly Paid Malouf All of the Commissions Earned on UASNM Bond Trades

8. Malouf was considered the bond expert within UASNM based upon his prior experience in trading bonds, and as a result, he handled most of the bond trading on behalf of UASNM clients. From 2008 to 2011, Malouf selected Branch Manager and Broker-Dealer to execute the overwhelming majority of bond transactions that he directed on behalf of UASNM clients. Between January 2008 and May 2011, UASNM placed over 200 bond trades through Broker-Dealer, representing approximately 90% of its bond trading in this period. During this period, Malouf, through UASNM, effected transactions in securities including U.S. Treasuries, federal agency bonds, and municipal bonds, and averaged between \$30 million and \$40 million in total trades per year.

9. Between January 2008 and April 2011, Branch Manager earned approximately \$1.1 million in commissions from UASNM bond transactions. Then, pursuant to a secret oral agreement with Malouf that was not disclosed to others at UASNM or Broker-Dealer or to UASNM clients, Branch Manager paid approximately \$1.1 million to Malouf.

10. Malouf claims that he sold the Broker-Dealer branch to Branch Manager at the end of 2007, and entered into a written Purchase of Practice Agreement ("PPA") at that time enabling him to share in 40% of the overall branch revenues for a four year period. However, the PPA was a sham to disguise the secret commission payments that Branch Manager had been making to Malouf since the beginning of 2008. Branch Manager's payments to Malouf were not consistent with the terms of the PPA, and instead were consistent with his secret oral agreement with

Malouf. Furthermore, Malouf and Branch Manager did not sign the sham PPA until approximately June 2010, after Broker-Dealer discovered that Branch Manager had been making secret commission payments to Malouf.

Malouf Failed to Disclose and Caused UASNM to Fail to Disclose His Receipt of Commissions from Branch Manager and the Resulting Conflicts of Interest

11. UASNM's Forms ADV Part II dated February 4, 2008, August 20, 2008, December 1, 2008, October 1, 2009, January 1, 2010, March 18, 2010, April 12, 2010, and UASNM's Form ADV Part 2A dated March 2011, failed to disclose Malouf's arrangement with Branch Manager, or the resulting conflicts of interest with respect to UASNM's execution of client bond trades through Broker-Dealer. Specifically, UASNM's Forms ADV made no disclosure that Malouf was receiving commissions or payments of any kind from Branch Manager.

12. Item 12 of UASNM's Forms ADV Part II dated February 4, 2008, August 20, 2008, December 1, 2008, October 1, 2009, January 1, 2010, March 18, 2010, April 12, 2010 and UASNM's Form ADV Part 2A dated March 2011 also made misleading disclosures relating to its best execution process which suggested that numerous factors were being considered in selecting a broker. For example, Item 12 of UASNM's Form ADV Part II dated April 12, 2010 disclosed that the broker recommended by UASNM was not "based upon any arrangement between the recommended broker and UAS[NM]" and instead was "dependent upon a number of factors, including the following: trade execution, custodial services, trust services, record keeping, and research, and/or ability to access a wide variety of securities. UAS[NM] reviews on a periodic and systematic basis its third-party relationships to ensure it is fulfilling its fiduciary duty to seek best execution on Client transactions." In reality, Malouf was using Broker-Dealer almost exclusively to execute the overwhelming majority of UASNM's bond trades primarily based upon his secret agreement with Branch Manager.

13. In addition, Item 12 of UASNM's Form ADV Part II dated April 12, 2010 affirmatively misrepresented that "employees of UASNM are not registered representatives of Schwab, Raymond James or Fidelity, and do not receive any commissions or fees from recommending these services." Given Malouf's receipt of commissions from Branch Manager for executing UASNM client bond trades through Broker-Dealer, this statement was false and misleading.

14. Items 10 and 12 of UASNM's Form ADV Part 2A dated March 2011 disclosed for the first time that Malouf had sold his interest in a Broker-Dealer branch in exchange for a series of payments, and that an incentive could exist for UASNM to utilize Broker-Dealer to generate revenue to fulfill the payments due to Malouf. However, this new disclosure was misleading in that it generally referenced UASNM's incentive to generate revenue for Broker-Dealer, but failed to adequately disclose the extent of the potential conflict of interest – specifically, Malouf's continued receipt of commissions from UASNM's bond trading pursuant to his secret agreement with Branch Manager.

15. UASNM's misstatements and omissions regarding Malouf's receipt of commissions from Branch Manager were material because Malouf's conflict of interest led him to

execute bond trades through Branch Manager and Broker-Dealer even where this may not have been in the best interests of UASNM clients.

16. As UASNM's CEO, Malouf was ultimately responsible for ensuring that the firm's Form ADV disclosures were complete and accurate. Malouf reviewed each of UASNM's Forms ADV before they were filed, and he focused particularly on disclosures relating to himself and Broker-Dealer. As the architect of the secret commission arrangement with Branch Manager and the primary trader of bonds for UASNM clients, Malouf was aware of the conflict of interest posed by the arrangement. Yet Malouf did not disclose his secret commission arrangement with Branch Manager to others at UASNM or its outside compliance consultant to enable them to disclose the arrangement or the resulting conflicts of interest.

Malouf Aided and Abetted and Caused UASNM to Make Misleading Claims on Its Website

17. Between 2008 and 2011, UASNM's website made the following statements:

“Uncompromised Objectivity Through Independence: UAS[NM] is not owned by any ‘product’ company nor compensated by any commissions. This allows us to provide investment advice void of conflicts of interest. UAS[NM] may place trades through multiple sources, ensuring that best cost/service/execution mix is met for clients.”

“We do not accept commissions and we vigorously maintain our independence to ensure absolute objectivity drives our decisions in managing our clients’ portfolios.”

18. Given Malouf's agreement with Branch Manager to receive substantially all commission payments from UASNM client transactions through Broker-Dealer, these statements on UASNM's website were materially false and misleading because: (i) UASNM's purported independence was compromised by Malouf's undisclosed incentives to place trades through Broker-Dealer; (ii) Malouf was in fact compensated by commissions; (iii) Malouf's receipt of commission-based compensation presented a material conflict of interest; and (iv) UASNM did not obtain competing bids from various broker-dealers due to Malouf's undisclosed conflict and thus failed to seek best execution on certain trades.

19. Malouf aided and abetted and caused UASNM's deceptive advertising because as the CEO, majority owner, and lead salesman for the firm, he was familiar with the contents of the website, and had ultimate responsibility for reviewing and approving it. Malouf was the only UASNM employee with knowledge of his secret agreement with Branch Manager, but he failed to inform the Chief Compliance Officer or others at UASNM about his secret agreement, and as a result Malouf caused the statements made on the firm's website to be materially false or misleading.

Malouf Failed to Seek Best Execution on Bond Trades

20. Between 2008 and 2011, Malouf told other UASNM employees, including the Chief Compliance Officer and UASNM's outside compliance consultant, that he often obtained three competing bids in order to determine the best price prior to making bond trades. However, Malouf did not obtain competing bids. Instead, between 2008 and 2011, Malouf nearly always selected Branch Manager's branch of Broker-Dealer to execute bond trades on behalf of UASNM clients. As a result, Malouf failed to seek best execution for UASNM's clients.

21. Because UASNM and Malouf failed to seek best execution from January 2008 through April 2011, UASNM clients paid higher commissions than were reasonably necessary for their transactions in approximately \$95 million in U.S. Treasury bonds and federal agency bonds.

Malouf Acted as an Unregistered Broker and Government Securities Broker

22. Between 2008 and 2011, Malouf effected transactions in, and induced or attempted to induce the purchase or sale of, securities including government securities. During this time, he was not registered with the Commission as a broker or dealer in accordance with Section 15(b) of the Exchange Act, and he was not associated with a broker or dealer other than a natural person. He also was not registered with the Commission as a government securities broker in accordance with Section 15C(a)(2) of the Exchange Act. Nonetheless, he was engaged in the business of effecting transactions in government securities and other securities for accounts of UASNM and UASNM clients. He regularly was involved in significant aspects of effecting transactions in government and municipal securities on behalf of UASNM clients, and he actively solicited investors and provided advice as to the merits of securities. Moreover, pursuant to his secret agreement with Branch Manager, he received substantially all of the commissions generated by UASNM client trades placed through Broker-Dealer.

E. VIOLATIONS

23. As a result of the conduct described above, Malouf willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

24. As a result of the conduct described above, Malouf willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

25. As a result of the conduct described above, Malouf willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

26. As a result of the conduct described above, Malouf willfully aided and abetted and caused UASNМ's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which prohibit publishing, circulating, or distributing advertisements containing untrue statements of material facts or that were otherwise false or misleading.

27. As a result of the conduct described above, Malouf willfully violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for any broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission pursuant to Section 15(b) of the Exchange Act (or, if a natural person, associated with a registered broker-dealer other than a natural person).

28. As a result of the conduct described above, Malouf willfully violated Section 15C(a)(1)(A) of the Exchange Act, which makes it unlawful for any government securities broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any government security, unless such government securities broker or dealer is registered with the Commission pursuant to Section 15C(a)(2) of the Exchange Act.

29. In the alternative, as a result of the conduct described above, Malouf also willfully aided and abetted and caused UASNМ's violations of Sections 206(1), 206(2), and 207 of the Advisers Act.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Sections 15(b) and 15C(c) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Malouf should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, Sections 15(a)(1) and 15C(a)(1)(A) of the Exchange Act, and Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-1(a)(5) thereunder; whether Malouf should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act; and whether Malouf should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, Section 203(j) of the Advisers Act, and Section 9 of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Jill M. Peterson
Assistant Secretary