

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-15918

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In the Matter of

DENNIS J. MALOUF,

Respondent.

**DIVISION OF ENFORCEMENT'S
RESPONSE TO MALOUF'S PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

DIVISION'S RESPONSE TO MALOUF'S PROPOSED FINDINGS OF FACT

No.	Proposed Finding of Fact
1	<p>ACA conducted itself as if it was the SEC during the mock SEC inspections of UASNM.</p> <p>“So, essentially, we would utilize the current document request list utilized by the SEC at that time as a baseline and go on site with the client and conduct ourselves as if we were the SEC . . .”</p> <p>Malouf Trial Transcript 11/19/14 at 718:21-24</p>
	<p>DISPUTED</p> <p>Q So, you've got your SEC examiner hat on; right? A Correct. Q And you're trying to conduct the audit as if you were an SEC examiner; right? A No, I'm a consultant. I am not an SEC examiner. Q Well, you're conducting a mock employee SEC compliance audit; are you not? A We're conducting a compliance program review on an annual basis.</p> <p>Malouf Trial Tr. 11/19/14 at 776:8-18 (Ciambor).</p>
2	<p>The 2002 engagement letter between ACA and UASNM outlined the scope of services that ACA provided to UASNM. UASNM and Malouf were entitled to rely on that engagement letter with respect to the scope of services that would be provided. The engagement letter was signed by Kopczynski.</p> <p>Q Now, getting back to the engagement. The scope of the engagement. Would it be fair to say that Dennis Malouf, as an employee of UASNM -- in fact, the CEO of UASNM -- would be entitled to rely on the representations in that engagement letter with respect to the scope of your services? A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 760:12-18; Ex. 351</p>
	<p>DISPUTED</p> <p>Q And in performing these functions, and the other ones in the bullet points there, what -- what responsibility did ACA assume for those reporting requirements? A ACA is a consulting firm. We provide recommendations and guidance to our clients. So, we're there to assist and provide recommendations to the filings, review them as part of the annual review on site as well throughout the year, depending on changes to the business or additional rules that have been passed by the SEC that may affect a particular client. Q Does ACA assume ultimate responsibility, for instance, for the accuracy of the Form ADVs that UASNM files?</p>

	<p>A No. Q Who has ultimate responsibility for the accuracy of ADVs? A UAS. Q Is that the same with other clients of ACA? A Yes. Q And did you convey that limitation of ACA's role to anybody at UASNM? A I did not specifically, but ACA, as a practice, does not assume an outsourced CCO role for any of our clients. We do not assume any of their fiduciary duties that they are subject to as supervised persons under the Advisers Act.</p> <p>Malouf Trial Transcript 11/19/14 at 724:7-725:8 (Ciambor).</p>
3	<p>In 31 years in the financial industry Malouf has never had a securities license suspended, has never had any discipline taken against a securities license, has never been fined for any securities related conduct, has never had a customer complaint, has never been sued by a customer, and has never had a customer complain to him about the price paid for a bond or any other aspect of a bond transaction.</p> <p>Q So, you've been in the industry for approximately 31 years; is that right? A Yes, sir. Q Okay. Have you ever had your license suspended? A No. Q Have you ever had any discipline taken against your license? A No. Q Ever been fined? A No. Q Have you ever had customer complaints? A No. Q Have you ever been sued by a customer? A No. Q Has any customer of UASNM complained to you about prices they paid for bonds? A No. Q Or about any aspect of a bond transaction? A No.</p> <p>Malouf Trial Transcript 11/20/14 at 1009:14-1010:8</p>
	<p>DISPUTED</p> <p>Two investors testified (and complained) at the hearing about nondisclosed payments of commissions to Mr. Malouf. <i>See, generally</i>, testimony of Moriarty and Owens; FOF 328, 330.</p>
4	<p>BondDesk was a tool that assisted Malouf in meeting his best execution obligation.</p> <p>Q Do you believe that BondDesk was a tool that would assist you in helping you</p>

	<p>to meet your best execution obligation? A I do.</p> <p>Malouf Trial Transcript 11/20/14 at 1102:7-10</p>
	<p>DISPUTED</p> <p><i>See</i> Division's PFOF 33: An investment advisor may not rely solely on a broker's trading platform, such as BondDesk, to fulfill his fiduciary duty of best execution.</p>
5	<p>Besides daily bid-ask spreads for a few of the trades, Dr. Gibbons could not find any trade data for the bond trades that he analyzed.</p> <p>Then I did primary research. And the primary research I did, which shows up in Figure 4 on page 27, is, first I went to look to see if I could actually find data today for these trades that occurred so many years ago. I couldn't. But I could find the daily bid-ask spread on bonds that were actually transacted in this data set that we were analyzing.</p> <p>Malouf Trial Transcript 11/18/14 at 482:3-9</p>
	<p>UNDISPUTED</p>
6	<p>Dr. Gibbons' expert opinion does not consider or take into account the conduct of Kirk Hudson.</p> <p>Q Okay. Is it fair to say that you were only asked to examine the conduct of Mr. Malouf? A Yes.</p> <p>Malouf Trial Transcript 11/18/14 at 521:8-10</p>
	<p>DISPUTED</p> <p>While Dr. Gibbons did not opine on the conduct of Mr. Hudson, he did consider it. <i>See, e.g.,</i> Ex. 243 (Gibbons Report at 3, considering Hudson testimony).</p>
7	<p>The Fabozzi study relied upon by Dr. Gibbons examines trades in the interdealer market, which are unlike the trades placed by UASNM.</p> <p>Q Sure, take your time. A The one to two basis points is a Fabozzi study that's looking at the interdealer market, which are trades bigger than \$5 million. And it's traded -- not traded generally by someone like UASNM.</p> <p>Malouf Trial Transcript 11/18/14 at 536:5-9</p>
	<p>DISPUTED</p> <p>Bid-ask spreads in the interdealer market are informative to the appropriate commissions for bond trades such as those at issue in this case:</p>

	<p>Q Okay. Let's keep moving on to the next page. And you know, I've read this report a couple of times -- honestly, more than a couple of times -- and I am trying to understand the correlation you're attempting to draw between bid-ask spreads and markups and commissions, and I haven't gotten there yet. Can you help us with that?</p> <p>A Well, you have to understand the basics, which are that bid-ask spreads are measures of the liquidity in marketability and of a security. And depending on what size the trade is and who's trading it, the bid-ask spread indeed can be somewhat different. So, there are no general studies of bid-ask spreads overall, but there are studies of bid-ask spreads which focus on different parts of the market. That's why I started with the interdealer market, which shows the two-basis-point spread. And what that means is, for very big buyers and sellers of these securities, broker-dealers are willing to trade them and only earn two basis points between what they buy them for and what they sell them for. That's what the bid-ask spread is telling us. That's what the study is all about. Now, it's obvious that Mr. Malouf and UASNM did not trade as an interdealer. But as we look down to other markets and other traders, we see that the bid-ask spread is still very, very, very low for agencies and U.S. Treasuries. And these various studies I cite sort of escalate down the market, if you will, between purchasers, until they get to an area that is more relevant to the UASNM trading....</p> <p>Malouf Trial Transcript 11/11/14 at 5:38:15-541:4 (Gibbons).</p>
8	<p>Dr. Gibbons did not review or consider any of the trade tickets for the trades at issue in preparing his expert report or forming any of his opinions.</p> <p>Q So, you say you never saw the trade tickets. A I didn't.</p> <p>Malouf Trial Transcript 11/18/14 at 542:14-15</p>
	UNDISPUTED
9	<p>Dr. Gibbons was unable to find and did not consider any studies regarding markups or commissions on bond trades.</p> <p>Q Okay. Did you encounter any studies that actually studied markups and commissions? A I looked very hard, and there just aren't any studies like that.</p> <p>Malouf Trial Transcript 11/18/14 at 544:5-8</p>
	UNDISPUTED
10	<p>There is no data available to compare the actual markups and commissions charged on UASNM's bond trades against other markups or commissions that were being charged on the same bonds at the same time.</p> <p>Q Sure. But you were not able to pull any bonds that were actually traded on these</p>

	<p>dates to show the actual markups and commissions that were available in the marketplace; have you?</p> <p>A Well, these are actual trades that could have been done. This is just the bid-ask spread. These are not actual trades -- you're correct -- because they -- they just don't capture the data that far back.</p> <p>Malouf Trial Transcript 11/18/14 at 558:16-23</p>
	UNDISPUTED
11	<p>BondDesk allows users to see what the best asks and best bids are from approximately 160 broker-dealers at any given time for particular bonds.</p> <p>– if you go to BondDesk, you'll find what the best asks are and what the best bids are. The broker can buy and sell at those two rates with other brokers. That means he can lock in that profit as a principal.</p> <p>Malouf Trial Transcript 11/18/14 at 541:10-14</p>
	UNDISPUTED
12	<p>Representations made to UASNM customer Dan Moriarty regarding the fact that UASNM did not charge any commissions, but rather a flat fee for the amount of money being managed, were made to him by Joseph Kopczynski.</p> <p>Q Was there anything that someone from Universal told you about Universal advisers that you found especially appealing?</p> <p>A Well, I met with Joe Kopczynski two or three times before I invested, and one of the things that impressed me was that they didn't charge a commission. It was a flat fee for the amount of money that they were managing per year.</p> <p>Malouf Trial Transcript 11/19/14 at 595:11-18</p>
	UNDISPUTED
13	<p>From 2000 to 2004, when Kopczynski was the owner and CEO of UAS, Kopczynski never advised customer Dan Moriarty that UAS might place trades for him through RJFS, or that Malouf might receive commissions for such trades.</p> <p>Q Okay. At any time in the period 2000 to 2004, did Mr. Kopczynski ever tell you that trades could be done in your account through Raymond James?</p> <p>A No.</p> <p>Q Did Mr. Kopczynski ever tell you, in the period of 2000 to 2004, that Mr. Malouf owned a Raymond James branch?</p> <p>A I'm not sure. I didn't understand that he owned it at that time. I understood that Dennis Malouf came from another brokerage, but I wasn't aware of which brokerage it was.</p> <p>Q Okay. But you had no understanding, in 2000 to 2004, that UAS might place trades for you through Raymond James; correct?</p>

	<p>A No, sir.</p> <p>Q And Mr. Kopczynski didn't tell you in 2000 -- in the period of 2000 to 2004, that if UAS placed trades through Raymond James that Mr. Malouf might receive a commission for those -- those trades?</p> <p>A No, sir.</p> <p>Malouf Trial Transcript 11/19/14 at 602:2-21</p>
	UNDISPUTED
14	<p>The advisers primarily responsible for Dan Moriarty's accounts were Kopczynski and Hudson.</p> <p>Q So your understanding is that Kirk Hudson was primarily the adviser responsible for your accounts?</p> <p>A Yes, after -- after Joe Kopczynski, yes.</p> <p>Malouf Trial Transcript 11/19/14 at 603:10-12</p>
	UNDISPUTED
15	<p>RJFS maintained a policy requiring the price on all bond trades to be fair and reasonable.</p> <p>Q Is it your understanding that Raymond James's policy involved whether the price was fair and reasonable?</p> <p>A Yes, that's correct.</p> <p>Malouf Trial Transcript 11/19/14 at 669:13-16</p> <p>*****</p> <p>"All customer executions must be at a price (including any mark-up/mark-down) that is fair and reasonable."</p> <p>Ex. 127</p>
	UNDISPUTED
16	<p>As of September 2, 2008, the branch checking account records for Branch 4GE would have been reviewed by someone at RJFS. These records would have been reviewed by someone at RJFS for a second time by November 9, 2009.</p> <p>Q As of September 2, 2008. And then there are some signatures of people signing off that this is approved, completed and closed; right?</p> <p>A That's correct.</p> <p>Q And it would be your expectation that before this examination was closed, the branch checking accounts would have been reviewed; correct?</p> <p>A Yes.</p>

Malouf Trial Transcript 11/19/14 at 691:17-25

Q Okay. And so, again, in 2009 it would have been your expectation that somebody would have looked at the checking account information from Mr. Lamonde's branch; and if in fact checks had been written by Mr. Lamonde to Mr. Malouf, they would have been identified.

A That's correct.

Q Okay. Now back to Exhibit 94. Sorry.

A Okay.

Q So, as of November 9, 2009, there had been two branch audits where there would be an expectation that payments would have been identified; is that correct?

A That's correct.

Malouf Trial Transcript 11/19/14 at 693:25-694:12

A. Other than them going through my books.

Q. By 'books' you mean --

A. Checkbook.

Q. As we've seen, one year you think you didn't have it onsite, but you think you faxed it to them?

A. Correct.

Q. But you are not sure if you did?

A. Correct. But they would have seen it prior years -- I mean, later years.

Q. They would have reviewed your bank records?

A. Correct.

Q. And would have seen checks from you to Mr. Malouf?

A. Correct.

Malouf Trial Transcript 11/19/14 at 862:1-16

"In addition, at the time of the examination all computers utilized for securities-related business and all operational checking accounts will be reviewed. An examination may be conducted at a branch location at any time, without notice."

Ex. 124 at 1

DISPUTED

Mr. Bell testified as to his expectation that checking account records would have been reviewed; in fact, RJFS did not discover the checks from Lamonde to Malouf until June

	<p>2010.</p> <p>Q Was June 2010 the first time that you knew that Mr. Lamonde was making payments to Mr. Malouf?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 654:10-12 (Bell).</p> <p>From: Kirk Bell Sent: Thursday, June 03, 2010 1:31 PM To: Maurice Lamonde Cc: Sarah Gray; Nicole Caringal; Ian Boreford Subject: FW: Branch 4GE: Moe Lamonde / Dennis Malouf agreement</p> <p>Moe</p> <p>You and I communicated in 2009 regarding the buy/sell agreement between you and Dennis. After reviewing the preliminary examination report, there are multiple checks being written from you to Dennis. However, we have no official buy/sell agreement.</p> <p>Can you please send to us the buy/sell by the end of next week?</p> <p>Thanks Kirk</p> <p>Exh. 95.</p>
17	<p>There is no way to tell who placed the bond trade(s) for which RJFS lowered the commission, what type of bond it was, or for which customer the trade was placed.</p> <p>Q Do you know, looking at this e-mail, who would have placed this trade with Mr. Lamonde?</p> <p>A I would assume Moe would have placed it.</p> <p>Q Right. But, I mean, for whom? Who was the customer?</p> <p>A I don't recall this particular trade.</p> <p>Q Any way to tell from this e-mail?</p> <p>A No.</p> <p>Q Is there any way even to tell whether this came from UAS?</p> <p>A Not with the documentation, no.</p> <p>Q So, based on this documentation, this could have been any customer of Raymond James anywhere in the country?</p> <p>A Yes.</p> <p>Q You also don't know what bond it is; right?</p> <p>A That's correct.</p> <p>Q So, we can't tell whether this is a Treasury bond; right?</p> <p>A Right.</p> <p>Q Or an agency bond?</p> <p>A Right.</p> <p>Q Or a municipal bond?</p> <p>A Correct.</p> <p>Q Or a corporate bond?</p> <p>A That's correct.</p>

	<p>Q Let's take a look at Exhibit 65. And again, this is an exchange between you and Ms. Skibicki about taking down a commission to a half point; right?</p> <p>A That's correct.</p> <p>Q On a \$3.8 million trade? Looking at this e-mail, is there any way to determine who the customer was?</p> <p>A Not on that particular section of the e-mail.</p> <p>Q Okay. You see an account number about halfway down there; right?</p> <p>A That's correct.</p> <p>Q Okay. ...1671. Sitting here today, I'm assuming you have no idea whose account that is; right?</p> <p>A I don't know that account.</p> <p>Q Let's assume for the purposes of the discussion that that is a customer of UASN; okay?</p> <p>A Okay.</p> <p>Q Even if we assume that, is there any way to tell which adviser at UAS placed this trade with Mr. Lamonde?</p> <p>A No, not on our records.</p> <p>Q And same questions as before. Do you know what type of transaction this is?</p> <p>A No, I don't.</p> <p>Q Okay. Now, Ms. Skibicki is on the BondDesk; right?</p> <p>A That's right.</p> <p>Q So, can we at least assume it's a bond or some other possibility there?</p> <p>A A taxable fixed-income product.</p> <p>Q So when you say "taxable," would that include Treasuries and agencies?</p> <p>A No.</p> <p>Q So, that could --</p> <p>A It could be. That would fall under her management.</p> <p>Q Understood. But we don't know what kind of bond it is just by looking at this e-mail; right?</p> <p>A That's correct.</p> <p>Malouf Trial Transcript 11/19/14 at 706:24-709:15</p>
	<p>DISPUTED</p> <p>Mr. Bell testified in the cited testimony only that he could not tell who placed the bond trades based on the documentation shown to him in court.</p> <p>Kirk Hudson testified that Malouf made the \$3 million bond trade on which RJFS reduced the commission from 1% to 0.5% and that Malouf questioned the reduction.</p> <p>PFOF 87.</p>
18	<p>From 2008 to 2011 RJFS had written policies and procedures pertaining to best execution.</p> <p>Q And in fact, you're aware that during this period, 2008 through 2011, Raymond James did have written policies and procedures pertaining to best execution; right?</p> <p>A Yes.</p>

	<p>Q And that Raymond James understood that it had an obligation to its customers to seek best execution on all security transactions? A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 710:23-711:6</p> <p>*****</p> <p>“Transactions that are executed by RJA as principal that appear to be potential best execution violations are price improved (corrected) each day to ensure that the customer receives at least the national best bid or off (NBBO) at the time of execution.”</p> <p>Ex. 126 at 1.</p>
	<p>UNDISPUTED, but RJFS’ best execution policies and procedures related to the duties of a broker-dealer, not an investment adviser.</p> <p>See PFOF 36.</p>
19	<p>If a bond trade is placed through RJFS with a commission or markup that exceeds the RJFS commission/markup grid, that trade will be rejected by RJFS</p> <p>Q Okay. So, if a bond trade came through to the trading desk with a commission greater than what it is in the grid, that would be kicked back; right? A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 710:6-9.</p>
	<p>UNDISPUTED</p>
20	<p>Part of the reason RJFS reviews the markups/commissions charged on bond trades is to ensure that its customers are getting best execution.</p> <p>Q And the purpose for that, at least in part, is to ensure that the customers of Raymond James are getting best execution; right? A That’s correct.</p> <p>Malouf Trial Transcript 11/19/14 at 710:19-22; Ex. 126</p>
	<p>UNDISPUTED, but RJFS’ best execution policies and procedures related to the duties of a broker-dealer, not an investment adviser.</p>
21	<p>Ciambor was the only ACA consultant who was not a former securities regulator. Malouf Trial Transcript 11/19/14 at 718:19-21</p> <p>A Essentially, at that time that I started, as I mentioned, all the consultants in the field were former regulators.</p> <p>Malouf Trial Transcript 11/19/14 at 718:19-21</p>

	<p>However, as I mentioned, the founding partners were all former SEC or state regulators, and the other two consultants on the staff at the time were also former SEC regulators.</p> <p>Malouf Trial Transcript 11/19/14 at 757:12-15</p> <p>.....</p> <p>Q I think it's clear that you yourself are not a former SEC examiner, right? A Correct.</p> <p>Malouf Trial Transcript 11/19/14 at 761:22-24</p>
	UNDISPUTED
22	<p>Each year ACA performed a periodic and systematic evaluation of the execution quality of UASNM's client trades with respect to equities and fixed income.</p> <p>Let's look at the fourth one from the bottom. It says, "Periodic and systematic evaluation of the execution quality of client trades." Is that a function you performed for AC – or, for UASNM? A Yes. Q And what was involved in performing that function? A Essentially, that was a review of the type of securities that they were trading on behalf of client accounts and then analyzing the internal processes for their efforts to seek best execution in the courts with industry best practice. Q And did that – what type of trades did that analysis involve? A Primarily, equity trading and fees that were associated with mutual fund transactions. Q Was there a bond trading component to that – that item of ACA's review? A Yes. We would review, essentially, what their practices were to trade fixed-income securities within their mandate to seek best execution.</p> <p>Malouf Trial Transcript 11/19/14 at 725:11-726:7</p>
	UNDISPUTED
23	<p>Ciambor was advised that UASNM would seek bids from multiple brokers to achieve best execution on bond trades, and he was provided documentation which evidenced that process.</p> <p>Essentially, that it was fairly straightforward, that they would seek price discovery from multiple brokers. Q Did you do anything to confirm that UASNM was following this best execution approach on bond trades? A Yes, we did request documentation that provided evidence of the process that was conveyed to us.</p>

	<p>Q And were you in fact provided with that documentation? A In certain instances, yes. Q And what type of documentation were you provided with? A I believe we were provided with price listings of various securities, or what I would refer to as a bid sheet, that would have various securities listed of similar duration or yield and pricing information along with that given to them from various brokers .</p> <p>Malouf Trial Transcript 11/19/14 at 728:3-21</p>
	<p>UNDISPUTED</p>
<p>24</p>	<p>Based upon interviews with various UASNM personnel and his review of documents Ciambor's understanding was that a multi-bid process for bond transactions was used fairly consistently for the majority of trades, but that only a sample of the documentation evidencing that process was being maintained.</p> <p>Q What was your understanding? A My understanding is that they were maintaining a sample of documentation to document that process and present to examiners when the time came. Q How about, actually – aside from documenting the process, how about actually performing the process of seeking multiple bids? What was your understanding, in 2008, '9 and '10, as to how often that procedure was being employed? A That it was fairly consistent for the majority of the trades.</p> <p>Malouf Trial Transcript 11/19/14 at 729:2-12</p> <p>.....</p> <p>Q Okay. And I believe, if I'm not mistaken, that happened in two ways, through interviews – people told you that? A Correct. Q And you actually saw some samples. A There was some limited documentation, yes.</p> <p>Malouf Trial Transcript 11/19/14 at 763:1-6</p>
	<p>UNDISPUTED that that was Ciambor's understanding, but in fact Malouf did the majority of bond trading for UASNM and he did not utilize a multi-bid process.</p> <p>FOF 76; PFOF 38, 39.</p>
<p>25</p>	<p>Hudson told Ciambor that he did bond trading for a significant number of his clients, and Ciambor understood that Hudson was the secondary trader at UASNM.</p> <p>Q How about Mr. Hudson? What did he tell you about his bond trading responsibilities? A That he did it for a significant number of his clients and, essentially, was the secondary trader,</p>

	<p>Malouf Trial Transcript 11/19/14 at 731:22-25</p> <p>UNDISPUTED that Ciambor testified that Hudson "was the secondary trader, if you will, at that point, <i>that would step in if Mr. Malouf was unavailable.</i>"</p> <p>Malouf Trial Transcript 11/19/14 at 731:22-732:2.</p>
26	<p>Ciambor learned that LaMonde was making payments to Malouf for the sale of Branch 4GE because Malouf told him.</p> <p>Q And did you come to find out at some point, at any point, that in fact Mr. Malouf was receiving payments from Mr. Lamonde for the sale of his Raymond James branch?</p> <p>A Yes.</p> <p>Q When did you come to discover that?</p> <p>A That would have been during our on-site review in 2010.</p> <p>Q How did you come to discover that?</p> <p>A During an interview with Mr. Malouf.</p> <p>Q Did he tell you?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 739:8-19</p>
	<p>UNDISPUTED that Malouf told Ciambor this information in June of 2010, two and a half years after the fact and after RJFS had found out about the payments.</p>
27	<p>Ciambor primarily worked with Kopczynski and Hudson to update UASNM's Forms ADV.</p> <p>Q Okay. And what was Mr. Malouf's involvement, in general, in updating form ADVs at UASNM?</p> <p>A Primarily, I dealt with Mr. Kopczynski and Mr. Hudson as the primary conflicts, when we did update the form as necessary, or as part of this process to convert to the new form, or as a result of any annual updates that were necessary.</p> <p>Malouf Trial Transcript 11/19/14 at 751:16-22</p>
	<p>UNDISPUTED</p>
28	<p>Ciambor did not undergo any formal training for his position at ACA with respect to best execution, identification of conflicts of interest, or identifying continuing commission payments.</p> <p>Q So, the answer to my question was, there was no formal training at the time you joined.</p> <p>A No.</p> <p>Q At what point did ACA implement formal training for its analysts and consultants?</p> <p>A I believe, around 2007.</p>

	<p>Q 2007. Did you undergo any of that formal training? A No, I did not. Q In 2007 did ACA implement any formal training with respect to best execution? A I believe best execution was addressed in one of the training modules for trading. Q Okay. But you never took that module? A No. Q Was there any formal training implemented in 2007 with respect to identifying conflicts of interest? A No. Q Was there any training -- formal training implemented in 2007, at ACA, with respect to identifying continuing commission payments? A No.</p> <p>Malouf Trial Transcript 11/19/14 at 757:16-758:12</p>
	UNDISPUTED
29	<p>Ciambor does not recall being told anything specifically by Malouf regarding his process for best execution.</p> <p>What do you recall Mr. Malouf told you about his process for best execution? A Nothing specific.</p> <p>Malouf Trial Transcript 11/19/14 at 766:18-20</p>
	<p>DISPUTED</p> <p>Ciambor recalled what Malouf told him about his best execution process as follows:</p> <p>Q And how did that policy that UASNM conveyed they were employing compare or comport with your understanding of best execution applications? A It appeared to us that they were seeking clarification on pricing in accordance with industry best practice, requesting multiple bids from multiple broker-dealers or other counterparties. Q And who at UASNM told you that that was their policy, to seek multiple bids? A I believe that came through discussions with Mr. Hudson and Mr. Malouf. ... Q And did Mr. Malouf -- what did Mr. Malouf tell you about the policy at UASNM regarding best execution and bond trades? A Essentially, that it was fairly straightforward, that they would seek price discovery from multiple brokers.</p> <p>Malouf Trial Transcript 11/19/14 726:19-727:4, 727:25-728:8 (Ciambor).</p>
30	<p>Ciambor was aware that Hudson was placing a significant number of bond trades for UAS customers through Branch 4GE prior to 2008.</p>

	<p>Q Were you aware -- well -- and prior to 2008 you were also aware that Mr. Malouf was in fact placing a significant number of bond trades for UAS customers through the Raymond James branch?</p> <p>A Yes.</p> <p>Q And you were also aware that Mr. Hudson was doing that; right?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 772:16-23</p>
	UNDISPUTED
31	<p>Ciambor was aware that UASNM continued to send a significant number of bond trades to Branch 4GE after January 2008.</p> <p>Q Were you aware after 2007 -- so, beginning in January 2008, you were aware that UASNM continued to send a significant number of bond trades to the Raymond James branch; right?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 773:6-10.</p>
	UNDISPUTED
32	<p>Ciambor did not ask Malouf for a copy of the purchase agreement for the sale of Branch 4GE and did not ask what the terms of the sale were in 2008.</p> <p>Q Now, at the time you had this conversation with Mr. Malouf about the sale of the branch, you didn't ask him for a copy of the purchase and sale agreement; right?</p> <p>A Correct.</p> <p>Q And you didn't ask him about the terms of the sale; correct?</p> <p>A Correct.</p> <p>Malouf Trial Transcript 11/19/14 at 774:11-18</p>
	UNDISPUTED
33	<p>ACA's annual review of UASNM included testing to ensure that UASNM's practices were consistent with the procedures set forth in its written compliance manual.</p> <p>Q And as part of your annual audit or review of UASNM, did that include testing for compliance -- let me rephrase it -- testing to ensure that the practices were consistent with the procedures laid out in the manual?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 780:11-16</p>
	UNDISPUTED

34	<p>From 2008 to 2010 it was Kopczynski's responsibility as CCO to review the arrangements between UASNM and third-party providers such as RJFS.</p> <p>Q Whose responsibility was it, during 2008 through 2011, to ensure or to review the arrangements with third-party providers like Raymond James? Do you recall offhand?</p> <p>A Not offhand, no.</p> <p>Q Okay.</p> <p>MR. KING: Jeffrey, page 99 when we get there. Tell you what, I'll save the documentation.</p> <p>Q Can you accept that the manual says that that's the CCO's responsibility?</p> <p>A Yes.</p> <p>Q Would that refresh your recollection?</p> <p>A Yes, most likely, if that's what it says, then it would have been Mr. Kopczynski's responsibility.</p> <p>Malouf Trial Transcript 11/19/14 at 787:24-788:13</p>
	<p>UNDISPUTED but also noted that the policy required UASNM employees using outside services to ensure they were of a reasonable quality:</p> <p>Responsibility</p> <p><i>Employees concerning the services of outside service providers are responsible for ensuring that the services being provided are of a reasonable quality. The CCO is responsible reviewing the arrangements not less frequently than annually, and conducting follow-up inquiries as necessary.</i></p> <p>Exh. 15 at 99.</p>
35	<p>Ciambor's primary contacts at UASNM were Kopczynski and Hudson, and Ciambor primarily interacted with them rather than Malouf.</p> <p>Q Okay. Who are your primary contacts at UASNM?</p> <p>A Mr. Kopczynski and Mr. Hudson.</p> <p>Q Okay. And you would normally interact with them, as opposed to Mr. Malouf; right?</p> <p>A Correct.</p> <p>Malouf Trial Transcript 11/19/14 at 790:15-20</p>
	<p>UNDISPUTED</p>
36	<p>In 2010 ACA would have normally charged \$50,000 per year for the type of service provided to UASNM, but ACA was only charging UASNM \$15,000.</p> <p>And now, this is an e-mail from you to Mr. Hudson a couple of years later, March of 2010, in which you're seeking a further adjustment from \$13,500 to \$15,000; correct?</p> <p>A Yes.</p> <p>Q Okay. Now, an engagement of this scope would normally – ACA would normally charge \$50,000 a year; right?</p> <p>A At this point in time, yes.</p>

	Malouf Trial Transcript 11/19/14 at 790:6-14
	UNDISPUTED
37	<p>The written semi-annual reviews of best execution that ACA provided to UASNM did not state that they were limited to equities.</p> <p>Q Okay. Now, something you just said interests me. You said "primarily related to equities"?</p> <p>A Correct.</p> <p>Q Where in the letter does it say that?</p> <p>A I don't believe it does.</p> <p>Malouf Trial Transcript 11/19/14 at 793:12-16</p>
	UNDISPUTED
38	<p>In 2010 Ciambor's understanding of the payments made by LaMonde to Malouf is that they were payments for the sale of Branch 4GE and not commission-based compensation.</p> <p>2010, I had a discussion with both Mr. Kopczynski and Mr. Hudson about the interview with Mr. Malouf where he disclosed payments coming from Mr. Lamonde, once again, as I understood it, as part of the transaction for the sale of the branch office and not commission-based compensation, with Mr. Kopczynski and Mr. Hudson.</p> <p>Malouf Trial Transcript 11/19/14 at 799:13-19</p>
	UNDISPUTED
39	<p>UASNM's California office closed in or around March 2008.</p> <p>"Right around March 31, 2008 the Cali office was closed." Did you understand that to be a reference to the California office of UASNM that had previously been maintained before that date?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 810:5-10; Exhibit 189</p>
	UNDISPUTED
40	<p>Ciambor believed the culture of compliance at UASNM was good from 2008 to 2010.</p> <p>What -- during this 2008 -- let's say, 2008 to 2010 time period -- forget about the first -- forget about 2011 for the purposes of this question. What was your opinion during that time of the culture of compliance at UASNM?</p> <p>A The culture of compliance?</p> <p>Q Yes, sir.</p> <p>A That it was fairly good.</p>

	Malouf Trial Transcript 11/19/14 at 814:8-15
	UNDISPUTED that Ciambor believed the culture of compliance at UASNM was "fairly good" from 2008 to 2010.
41	<p>Ciambor personally reviewed Pt II of UASNM's Forms ADV on at least an annual basis.</p> <p>Essentially, we would review the entirety of the document in terms of the Form ADV, Part II and also the Part I A as part of our annual review. Upon the annual update to Form ADV, Part I A we would also review those responses at that time and make any recommendations that we felt were necessary. And then, essentially, we would be reliant on UAS to bring additional issues to our attention throughout the year if they deemed it was appropriate to consider disclosure.</p> <p>Q Okay. 25, please. Going to look at Exhibit 25. Who -- who at ACA would actually review the Form ADV, Part II?</p> <p>A I would.</p> <p>Q You did that personally?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 820:5-21</p>
	UNDISPUTED
42	<p>Ciambor told Kopczynski that Malouf had shown him evidence of bids regarding bond transactions.</p> <p>Q And Mr. Kopczynski is saying it is his understanding from conversations with you that Mr. Malouf showed you evidence of bids regarding bond transactions. Did you tell Mr. Kopczynski that Mr. Malouf had done that?</p> <p>A In previous years, yes.</p> <p>Malouf Trial Transcript 11/19/14 at 837:6-12</p>
	UNDISPUTED
43	<p>Checks paid from LaMonde to Malouf were sometimes exchanged in the UASNM office.</p> <p>Q. And did you sometimes hand Mr. Malouf checks in the office?</p> <p>A. Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 877:21-23</p>
	UNDISPUTED
44	<p>Malouf and LaMonde had an understanding to not charge more than 1% on any bond transactions.</p> <p>A. We pretty much never did one -- actually, we never did one over one percent, I don't think.</p> <p>Q. So did you have that understanding with him?</p>

	<p>A. I believe so, yes. Q. He testified that you did and I wanted to confirm that ... you agree. A. Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 883:1-9</p> <p>*****</p> <p>A One percent is the amount that he was supposedly charged, or was supposed to charge the client for -- excuse me -- the bond transaction, or below, if in fact Raymond James's institutional grid suggested it. To follow the grid. Q Okay. So -- but generally, the understanding with Mr. Lamonde was one percent was the most to pay in commission on a bond trade? A Right.</p> <p>Malouf Trial Transcript 11/20/14 at 967:2-10</p>
	<p>DISPUTED</p> <p>Numerous bond trades at issue in this case involved a commission in excess of 1%. See Ex. 582 Tab 1 (Denigris Amended Report).</p>
45	<p>Judith Owens and Dan Moriarty were not told that the money they were paid for purported excess charges on bonds came from money that was owed to Malouf for his interest in UASNM.</p> <p>Q Well, the company didn't tell you that that was money that was owed to Mr. Malouf that was paid to you; correct? A Correct.</p> <p>Malouf Trial Transcript 11/20/14 at 902:7-10.</p> <p>*****</p> <p>Q Okay. Do you have any understanding -- and if you don't, it's fine; but do you have any understanding with respect to the source of that money? Whether that was money -- that was the company's money -- when I say "the company," UASNM -- or money from some other source? A I do not know.</p> <p>Malouf Trial Transcript 11/19/14 at 600:1-7</p>
	<p>UNDISPUTED</p>
46	<p>Letters sent to UASNM customers advising them of the payments for purported excess charges on bond trades did not explicitly advise customers that UASNM had been found to have breached its fiduciary duty to them.</p>

	<p>Q Okay. And in that letter -- do you recall it telling you that the company believed Mr. Malouf had breached its duty to its clients in that letter? A Yes. Q But that letter didn't tell you that the company had also breached its duty to its clients; did it? A I don't believe so.</p> <p>Malouf Trial Transcript 11/20/14 at 901:18-25</p>
	<p>DISPUTED</p> <p>The letters included the Order regarding UASNM's breach of fiduciary duty.</p> <p><small>advised. We are pleased to report the SEC has now completed its investigation with respect to the Company and in accordance with the Company's Offer of Settlement and the SEC's Order, the Company has agreed to reimburse any affected clients. A copy of the Order is enclosed with this letter. The Company</small></p> <p>Ex. 314 at 14.</p>
47	<p>On August 21, 2008, Judith Owens acknowledged with her signature that she received and read the information in UASNM's Form ADV Pt II. At that time the UASNM Form ADV Pt II stated that employees of UAS may receive compensation for transactions executed through RJFS.</p> <p>Q If you look at the last page there it says "client signatures," and there's two lines below that. Do you see that? A Yes. Q Is that your signature? A Yes. Q And that says August 21, 2008. Think that's about the right time? A Yeah.</p> <p>Malouf Trial Transcript 11/20/14 at 905:19-906:2</p> <p>*****</p> <p>Q Okay. That says, "UAS is affiliated with a branch office of Raymond James Financial Services ... an SEC-registered broker-dealer and a member of the National Association of Securities Dealers. Dennis Malouf, the owner of the branch office, is also the president and CEO of UAS. Employees of UAS are also registered representatives of RJFS and, as such, may receive compensation for transactions executed through RJFS." Correct? A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 908:9-18</p>
	<p>DISPUTED, the February 2008 Form ADV Pt II advised that employees of UAS were registered representatives of RJFS and might receive compensation, this did not apply to Malouf who was no longer a registered representative.</p>

48	<p>Malouf believed that ACA did a formal best execution analysis for UASNM each year or assisted Kopczynski with such a review.</p> <p>Q Do you believe, though, that a former -- formal analysis was actually ever done on best execution by UASNM?</p> <p>A To my knowledge, I believe that ACA required and did that for us every year. Or assisted Mr. Kopczynski. Excuse me.</p> <p>Malouf Trial Transcript 11/20/14 at 947:14-19</p>
	<p>UNDISPUTED</p>
49	<p>Malouf spot-checked the bond market for pricing every morning.</p> <p>Q All right. And my question to you is, did you actually do any of that spot-checking?</p> <p>A I visibly spot-checked the market every morning, because I got a litany of inventories from various broker-dealers. Formalized? No. But I knew where the market was and what things were worth.</p> <p>Q But formalized -- you didn't go out and call Schwab and say, "I've got a bond, can you bid on it?"</p> <p>A Well, more than likely I was buying bonds, so I wasn't seeking bids to sell for the majority of the transactions we did, unless they had matured. So, to answer your carefully -- your question, I saw inventories every day that people would call me on, and I saw the Raymond James tear sheet, and I knew right within plus or minus basis points -- two basis points, three, five -- you heard the intraday trading Mr. Gibbons was talking about, which is an institutional spread between one broker-dealer and another.</p> <p>Malouf Trial Transcript 11/20/14 at 951:2-20.</p>
	<p>DISPUTED. Malouf's testimony that he "spot-checked" the market was that he took an informal look at what things were worth. He has since agreed that "'spot-checking' is going out to Schwab or Fidelity or another broker and getting a bid" and that he did not do that.</p> <p>FOF 180; PFOF 39.</p>
50	<p>Malouf could not determine the precise commissions that LaMonde was charging on bond transactions from trade confirmations or the UASNM trade blotter.</p> <p>Q My question is, would you know what the commission that Mr. Lamonde was going to charge for the trade was?</p> <p>A Approximately.</p> <p>Q Would you know precisely?</p> <p>A Not -- no, not precisely.</p> <p>Malouf Trial Transcript 11/20/14 at 971:17-22</p>

	<p>UNDISPUTED that Mr. Malouf knew the approximate commissions on the bond trades he made through Mr. Lamonde, otherwise DISPUTED as inconsistent with cited testimony.</p>
51	<p>Malouf learned about or was directed to NASD 2420 by RJFS.</p> <p>Q All right. So, what did you do as you were investigating how to conduct the sale to Moe Lamonde? Why don't you walk us through that.</p> <p>A At first, that I was pointed to the transition website at Raymond James that has the methodology, and they cited the NASD rule. And I went out onto the internet and I read the NASD rule there, and I looked at the rules. You can't open up -- et cetera, et cetera. And I thought that it was fairly straightforward and proceeded.</p> <p>Malouf Trial Transcript 11/20/14 at 1041:5-14</p> <p>*****</p> <p>Q Why did you come to this website to begin with?</p> <p>A Well, Raymond James had this similar version of what I'm reading here, and I wanted to validate the fact that it was at the FINRA website, and I was selling my practice and receiving payment for it.</p> <p>Malouf Trial Transcript 11/20/14 at 1043:6-11</p>
	<p>UNDISPUTED</p>
52	<p>Malouf agreed to put \$850,000 owed to him for his interest in UASNM in escrow because he did not believe that any wrong had been done.</p> <p>Q Why did you agree to -- well, let me ask you about what accusations you're talking about first.</p> <p>A Well, the bond trades. Basically, that their claim to -- that these were not appropriate.</p> <p>Q And speaking specifically about best execution?</p> <p>A Yes.</p> <p>Q And did you believe that there had been a failure of best execution for bond trades you did?</p> <p>A No.</p> <p>Q Why did you agree to put the money in escrow then?</p> <p>A I was certain at the time that the Exchange would come to the same conclusion I did.</p> <p>Q Which is what?</p> <p>A That there was best execution.</p> <p>Q And so you would get your money back?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1058:8-25</p>

	<p>DISPUTED</p> <p>Cited testimony refers only to best execution, not "any wrong."</p>
53	<p>During the time that Kopczynski was CCO, Malouf relied upon him to carry out all responsibilities of the compliance program at UASNM. Malouf Trial Transcript 11/20/14 at 1062:3-8</p> <p>Q What were his responsibilities? A The entire scope of the compliance program was his responsibility. Q And did you rely on him to carry out those responsibilities? A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1062:3-8</p>
	<p>UNDISPUTED</p>
54	<p>The SEC conducted examinations of UASNM in 2002 and 2006. Neither examination resulted in UASNM being advised that any issues existed with respect to whether UASNM was satisfying its best execution obligations.</p> <p>Was it your recollection, in 2002 -- in this letter following up on the exam, that there were any issues with best execution? A No.</p> <p>Malouf Trial Transcript 11/20/14 at 1125:12-15 Exhibits 391 and 558</p>
	<p>UNDISPUTED</p>
55	<p>UASNM's bond trading practices and procedures were generally unchanged from 2000 through May 2011.</p> <p>Q Now, during this period in the early 2000s -- so, let's say, between 2000 and 2007 -- period covering these letters -- did you do anything differently with respect to your bond trading than you were doing between 2008 and 2011? A No.</p> <p>Malouf Trial Transcript 11/20/14 at 1126:11-16</p>
	<p>UNDISPUTED</p>
56	<p>ACA never advised Malouf at any time from 2002 to 2010 that there was any issue with respect to UASNM's best execution.</p> <p>Q In any year during that period, did -- did ACA advise you that there were any issues with regard to best execution? A No.</p>

	Malouf Trial Transcript 11/20/14 at 1128:10-13
	UNDISPUTED
57	<p>Keller knew Malouf sold Branch 4GE as of January 2008, and assumed he received payment for it. Keller knew Malouf received ongoing payments from LaMonde because Malouf told him.</p> <p>Q Let me ask the question again. When did you first become aware that Mr. Malouf was receiving payments of some kind from Mr. Lamonde?</p> <p>A When did I become aware. Well, he said he sold the branch. I assume, when you sell something, you get paid for it. So, I guess, January of '08.</p> <p>Malouf Trial Transcript 11/20/14 at 1191:1-6</p>
	UNDISPUTED as to the first sentence. The second sentence is not supported by the evidence.
58	<p>It was Kopczynski's opinion that RJFS no longer had to be disclosed on UASNM's Form ADV in 2010.</p> <p>Q So, you're concerned enough to have another conversation with Mr. Kopczynski, and you can't remember what he said?</p> <p>A The fact that nothing changed -- my impression is that he said that, given that Mr. Malouf was no longer a Raymond James employee and Mr. Lehrman was no longer an employee on the brokerage side, that the disclosure change would be sufficient.</p> <p>Q What does that mean? "The disclosure change." Meaning, it doesn't have to be disclosed anymore?</p> <p>A Correct.</p> <p>Q And that was Mr. Kopczynski's opinion then; correct?</p> <p>A That's what I recall, yes.</p> <p>Q And he was the chief compliance officer at that time; correct?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1194:14-1195:6</p>
	DISPUTED
	<p>Mr. Kopczynski believed that RJFS/Mr. Lamonde's payments to Mr. Malouf needed to be disclosed in 2010:</p> <p>Q So, I'm not going to focus on the time frame for this question, because it appears that you really don't have a recollection of exactly when that might have occurred, other than sometime most likely in the latter half of 2010; right?</p> <p>A Mm-hmm.</p> <p>Q So, my question is: When you learned that information, did it occur to you that that represented a potential conflict of interest?</p> <p>A It did.</p>

	<p>Q What did you do?</p> <p>A Believing that since ACA was the one that had that initial conversation, that they would be taking the appropriate action on the ADVs.</p> <p>Q Okay. So, you do believe that you identified that as an actual potential conflict of interest at the time that you first learned; right?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/21/14 at 1335:9-1336:1 (Kopczynski).</p>
59	<p>Keller placed 50-60% of the bond trades he directed through RJFS.</p> <p>Q Okay. And just -- do you have an idea, in the 2008, '9 and '10 time period, how often you would execute a trade through Raymond James, as opposed to some other broker? A bond trade?</p> <p>A Raymond James? I would say that 50 to 60 percent of my trades went through Raymond James.</p> <p>Malouf Trial Transcript 11/20/14 at 1165:21-1166:1</p>
	UNDISPUTED
60	<p>Keller knew that Malouf was receiving payments from LaMonde because Malouf told him sometime prior to March 2010.</p> <p>A The Form ADV was being circulated in the February-March 2010 time frame, and it was being shown to Mr. Kopczynski, Mr. Malouf, Mr. Hudson, myself and, I believe, Mr. Peter Lehrman, another adviser at our firm. And in the Form ADV, one of the suggestions that was being made by Mr. Malouf was to remove language that referred to Raymond James affiliates or personnel receiving commissions. And I wasn't, at that point, thinking that what he was receiving was commissions, but I was aware that he was receiving income of some sort from Mr. Lamonde through what he had shared verbally. Mr. Malouf, that is.</p> <p>Malouf Trial Transcript 11/20/14 at 1173:2-13</p>
	UNDISPUTED
61	<p>Malouf obtained multiple bids on all bond trades that Keller worked on with him.</p> <p>Q Yes. Okay. So, you did have evidence that Mr. Malouf would obtain multiple bids?</p> <p>A In my particular bond transactions that I worked with him on?</p> <p>Q Yes.</p> <p>A He did obtain those.</p> <p>Malouf Trial Transcript 11/20/14 at 1185:18-23</p>
	DISPUTED
	Keller was the one that obtained multiple bids, not Malouf.

	FOF 174, 203; PFOF 38, 39.
62	<p>Malouf was one of the people who told Keller about the practice of obtaining multiple bids when purchasing bonds.</p> <p>Q Is it true that it was Mr. Malouf who told you about obtaining multiple bids? A He was one of them.</p> <p>Malouf Trial Transcript 11/20/14 at 1201:4-6</p>
	UNDISPUTED
63	<p>Keller's belief that Malouf did not obtain best execution and that the prices paid on bond trades were too high is based solely upon information he received from Kopczynski and Hudson during the state court litigation.</p> <p>Q So, you actually didn't see any prices on Mr. Malouf's trades outside the best price of the day; right? A Correct. Q Why did you testify that you did? A It might have been a semantic issue. But I'm saying, after the fact, litigation-wise, it appeared that the prices were outside the best pricing for the day, based on what I heard from the – around the office, after Mr. Malouf was gone. Q So, somebody told you that? A Yes. Q Who told you that? A Both Mr. Kopczynski and Mr. Hudson. Q The two people who were suing my client? A Yes. Q And you never independently verified that. I think we've established that; right? A Correct. I trusted what they said.</p> <p>Malouf Trial Transcript 11/20/14 at 1204:2-20</p>
	UNDISPUTED
64	<p>Kopczynski only reviewed UASNM's trade blotters, if at all, in response to something that ACA would have raised as a concern.</p> <p>Q But you never conducted your own independent review unless ACA sent you something of concern; correct? A That's correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1291:8-11</p>
	UNDISPUTED
65	Kopczynski sent UASNM trade blotters to ACA quarterly.

	<p>Q How often did you send the trade blotters to ACA? A Quarterly.</p> <p>Malouf Trial Transcript 11/21/14 at 1291:12-14</p>
	UNDISPUTED
66	<p>ACA reviewed UASNM's trade confirms during ACA's annual reviews.</p> <p>Q So, let me ask it again. Did ACA review the confirms for the bond trades along with the trade blotter, or no? A The trade blotter was sent to them quarterly. In their annual reviews they would look at the confirms as well.</p> <p>Malouf Trial Transcript 11/21/14 at 1303:19-24</p>
	UNDISPUTED
67	<p>The confirms that UASNM received for bond trades did not reflect the specific amount of any markups.</p> <p>A The confirms that we were given did not have markups on them; so, that would be fair, I did not look for that.</p> <p>Malouf Trial Transcript 11/21/14 at 1308:8-10</p>
	UNDISPUTED
68	<p>Kopczynski would not take any action with respect to best execution, markups, or commissions unless ACA noted something about those issues on their annual reports.</p> <p>Q If their reports didn't say anything on excessive markups and commissions, you relied on that? A That is correct. Q And if there was no deficiency noted by ACA on its reports with respect to best execution on bonds, is it fair to say that you would take no further action? A That is correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1308:22-1309:4</p>
	UNDISPUTED
69	<p>Kopczynski was responsible for supervising Malouf's bond trading.</p> <p>Q Who supervised Mr. Malouf's bond trading? A I was – I was the responsible party. Q And can we agree that Mr. Malouf, under the securities laws, would not be allowed to supervise himself? A I would believe that to be correct.</p>

	Malouf Trial Transcript 11/21/14 at 1311:9-14
	UNDISPUTED
70	<p>Kopczynski personally reviewed UASNM's Forms ADV to ensure they were accurate and complete twice a year.</p> <p>A That was done twice a year, for sure.</p> <p>Q And you were involved in that process?</p> <p>A Yes.</p> <p>Q And you personally reviewed the Form ADV; right?</p> <p>A Along with ACA, yes.</p> <p>Q Not asking about ACA. I'm asking about Mr. Kopczynski.</p> <p>A I did.</p> <p>Q And the purpose of your review was to ensure that it was accurate and complete; right?</p> <p>A That is correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1325:14-25</p>
	UNDISPUTED
71	<p>UASNM customers were provided with Pt II of the UASNM Form ADV annually by mail, and prospective clients were handed a copy.</p> <p>A It was distributed annually, through a mailing for those existing clients; and it was handed to prospective clients.</p> <p>Q And what was the requirement with regard to prospective clients in this forum?</p> <p>A The client actually signed off that they received it as part of their contracting with us.</p> <p>Q And do you believe that UASNM complied with that and provided the - whatever Form ADV Part II was, in effect, to their clients in the 2008-2010 time frame?</p> <p>A I believe so.</p> <p>Malouf Trial Transcript 11/21/14 at 1377:1-12.</p>
	UNDISPUTED
72	<p>LaMonde and Malouf openly exchanged, discussed, and argued about the payments in the UASNM office.</p> <p>Q Okay. And these checks were handed either to you or Mr. Malouf openly in the office; correct?</p> <p>A Yes.</p> <p>Q And there were discussions about these checks in the office?</p> <p>A Yes.</p> <p>Q And sometimes there were arguments about these checks in the office?</p> <p>A Yes.</p>

	<p>Q And would you agree that the office was fairly open to everyone? A Yes, but where I sat and Mr. Lamonde sat were the back corner of the office.</p> <p>Malouf Trial Transcript 11/21/14 at 1251:4-16</p> <p>.....</p> <p>Q But it wasn't much of a secret; was it? A To me? No.</p> <p>Malouf Trial Transcript 11/21/14 at 1252:10-11</p>
	UNDISPUTED
73	<p>The sale value of Branch 4GE was based on 2-times trailing revenue of approximately \$500,000 to \$550,000.</p> <p>Q And can you expound on that? What multiple were you using -- A Two. Q -- and what you were applying it to. A Two times revenue. Q And what was revenue of the Raymond James branch in 2007, if you recall? A I'd be speculating, if you like, but -- Q Just give me your best guess. A 5, 500,000. 550, I think it might have been. Q So you had this conversation with Mr. Lamonde, and you said the branch is worth approximately two times trailing revenue. A Correct. Q And so that was about a million or 1.1 dollars (sic); is that right? A Approximately. Q And when was it that you had this conversation? A Approximately latter part of 2007. Q Okay. And did Mr. Lamonde agree with you that the branch was worth approximately a million or \$1.1 million? A I believe so.</p> <p>Malouf Trial Transcript 11/20/14 at 924:22-925:20</p>
	DISPUTED
	<p>This purported valuation appears nowhere in the PPA and is inconsistent with Mr. Lamonde's testimony that the agreement was to pay close to 100% of commissions to Mr. Malouf.</p> <p>PFOF 6.</p>
74	The price paid by Malouf and Hudson to purchase UAS from Kopczynski was based upon

	<p>a 2-times trailing revenues.</p> <p>Q Was there ever such a fixed or hard dollar amount for the sale agreed to with Mr. Lamonde?</p> <p>A We had a conversation about it.</p> <p>Q And what was that?</p> <p>A I explained to him the multiple I used for purchasing Universal Advisory Services, and applied the same principle to buying Raymond James.</p> <p>Q And can you expound on that? What multiple were you using --</p> <p>A Two.</p> <p>Malouf Trial Transcript 11/20/14 at 924:15-24</p> <p>*****</p> <p>Q And was that the value of the company or the value of your shares?</p> <p>A Well, if you use the same multiple that we used to buy the business, and they are doing two and a half million dollars, you multiply it by two. So, obviously, about 2.3 million would have been 58 percent.</p> <p>Malouf Trial Transcript 11/20/14 at 1056:17-23</p>
	<p>UNDISPUTED</p>
<p>75</p>	<p>Dan Moriarty was on actual or constructive notice that employees of RJFS may earn commissions on transactions prior to 2008 and chose to do business with UASNM anyway.</p> <p>Q Mr. Moriarty, if you look in the top right-hand corner you will see a date. It's not entirely clear, but I believe the date on that is February 4, 2008.</p> <p>A Yes, sir.</p> <p>Q Okay. And if you can read section 8 – the paragraph next to 8.C there. Can you read that? You can just read it to yourself, and I'll ask you about it. If you can't read it, let me know.</p> <p>A That – the paragraph that starts with "Joe Kopczynski and Kirk Hudson"?</p> <p>Q No, sorry, a little bit above that. It says, "UAS is affiliated with a branch office of Raymond James Financial Services."</p> <p>A Okay.</p> <p>Q Okay. Go ahead and let me know when you're done reading that.</p> <p>A Yes, I read it.</p> <p>Q And you see in that paragraph that it says that, "UAS is affiliated with a branch of Raymond James Financial Services;" correct?</p> <p>A That's what it says, yes, sir.</p> <p>Q And you understand that to be the branch that Mr. Malouf had a relationship with?</p>

	<p>A Well, it's not clear, but I would assume so.</p> <p>Q Well, on that third line right there it says – in the end of the second and onto the third line it says, “Dennis Malouf, the owner of the branch office, is also the president and CEO of UAS.” So from that language you see that the Raymond James office referred to is the one that Dennis Malouf is the owner of; correct?</p> <p>A Well, I agree that it says that, but it doesn't identify the branch office in that sentence that you just read.</p> <p>Q Okay. But it's disclosed in the last line right there that, “Employees of UAS are also registered representatives of RJFS and, as such, may receive compensation for transactions executed through RJFS;” correct?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/29/14 at 613:17-615:7</p>
	UNDISPUTED
76	<p>Steve McGinnis never asked Malouf or RJFS for Exhibit A to the PPA.</p> <p>Q Okay. Did you ask Mr. Malouf if he had Exhibit A?</p> <p>A I never talked to Mr. Malouf.</p> <p>Q Do you know if –</p> <p>A I know one was never produced in the lawsuit.</p> <p>Q Okay. Did you talk with Raymond James about whether they had an Exhibit A?</p> <p>A No. I know it was subpoenaed, but I don't know – I didn't do it directly. I was merely reviewing the documents I was given.</p> <p>Malouf Trial Transcript 11/18/14 at 460:21-461:5</p>
	UNDISPUTED
77	<p>LaMonde testified that the value of 4GE was about \$1 million.</p> <p>Q I guess what I'm trying to get a sense of is if you add it up in total, let's say it was 250 a year times 4, so a million dollars that you were going to pay for this branch.</p> <p>A Correct.</p> <p>Division's Ex. 229 LaMonde Transcript LaMonde Transcript 67:7-11</p>
	DISPUTED
	<p>Mr. Lamonde testified that he did not total the value, as payments were based on commissions:</p> <p>Q Did you at that point in time consider in your head how much money that was likely to add up to over four years?</p> <p>A Again, it varied because it was commissions. So exactly, no.</p>

	Division's Ex. 229 LaMonde Transcript LaMonde Transcript 66:19-23.
78	<p>McGinnis relied upon representations by Hudson and Kopczynski that Exhibit A to the PPA did not exist.</p> <p>Q Okay. So, can we agree that, as a matter of fact, you don't know whether there was ever an Exhibit A, you just know that you weren't provided one?</p> <p>A I know that it was represented to me that no Exhibit A existed.</p> <p>Q By the people who hired you.</p> <p>A By the people who hired me. That it was never -- let me -- let me -- let me correct this. Not that it never existed. It was represented to me that it was never produced in discovery.</p> <p>Malouf Trial Transcript 11/18/14 at 461:6-15</p>
	<p>DISPUTED</p> <p>Based upon the cited testimony, Mr. McGinnis relied upon representations that Exhibit A was never produced in discovery.</p>
79	<p>The payments to Malouf were to be based upon a percentage of the gross commissions for the whole of Branch 4GE over a period of four years.</p> <p>Q One element was the four-year payout period. How about the amount of the payout, did you discuss that with Mr. Malouf?</p> <p>A It was going to be a percentage of the growth.</p> <p>Q Percentage of the gross what?</p> <p>A Commissions.</p> <p>Q Gross commissions earned by --</p> <p>A The branch.</p> <p>Q As a whole?</p> <p>A Correct.</p> <p>Q So every commission that the branch earned, Mr. Malouf was going to be entitled to 40 percent of that?</p> <p>A Correct.</p> <p>Q For four years?</p> <p>A Correct.</p> <p>Division's Ex. 229 LaMonde Transcript 65:18-66:9</p>
	<p>DISPUTED</p> <p>Mr. Lamonde clarified in his testimony that the agreement was to pay close to 100% of commissions to Mr. Malouf.</p> <p>PFOF 6.</p>
80	No effort has been undertaken to determine the specific percentage of bond trades actually

	<p>done by Malouf or anyone else.</p> <p>Q Did you undertake any effort in this report to identify any specific trades to determine or confirm that Mr. Malouf did a specific trade?</p> <p>A No.</p> <p>Malouf Trial Transcript 11/18/14 at 508:1-4</p>
	<p>DISPUTED</p> <p>Malouf directed the majority (between 60% and 95%) of the 81 bond trades identified by Dr. Gibbons. PFOF 48.</p> <p>Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers. FOF 288.</p> <p>Mr. Hudson identified specific trades done by Mr. Malouf during the hearing. Malouf Trial Transcript 11/17/14 112:10-124:22 (Hudson).</p> <p>Hudson studied the bond trades done through brokers other than Raymond James and believed that those were primarily done by Matt Keller and Austin McDaniel, and that Malouf might have been involved with only one of those non-Raymond James trades. FOF 317.</p>
81	<p>None of the 81 bond trades at issue has been positively identified as having been directed by Malouf, and no effort to do so has been undertaken by anyone.</p> <p>Q And so, the 81 trades -- can we agree that you didn't make any effort to determine whether those were in fact made by Mr. Malouf?</p> <p>A Other than the testimony that I reviewed.</p> <p>Q Other than the testimony that you reviewed?</p> <p>A The testimony says -- and it's cited here --</p> <p>Q Right.</p> <p>A -- that he made between 70 and 95 percent of the trades.</p> <p>Q Okay. And actually, technically, I think, Mr. Malouf's testimony was, somewhere between 60 and 70 percent --</p> <p>A So, 60 and 70 percent of the trades. So, I did review that testimony. As I've been sitting here 17 the last couple of days, there were other things that were revealed about his participation or nonparticipation of the trade, so, of course, if you asked me a question, I'm going to know that. I'm going to know what Mr. McGinnis said and what Mr. Hudson said, and so on.</p> <p>Malouf Trial Transcript 11/18/14 at 507:3-22</p>
	<p>DISPUTED</p> <p>Malouf directed the majority (between 60% and 95%) of the 81 bond trades identified by Dr. Gibbons. PFOF 48.</p>

	<p>Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers. FOF 288.</p> <p>Mr. Hudson identified specific trades done by Mr. Malouf during the hearing. Malouf Trial Transcript 11/17/14 112:10-124:22 (Hudson).</p>
82	<p>Ciambor did not ask Malouf for a copy of the PPA or what the terms of the sale of Branch 4GE were in 2008 or 2009.</p> <p>Q Now, at the time you had this conversation with Mr. Malouf about the sale of the branch, you didn't ask him for a copy of the purchase and sale agreement; right?</p> <p>A Correct.</p> <p>Q And you didn't ask him about the terms of the sale; correct?</p> <p>A Correct.</p> <p>Malouf Trial Transcript 11/19/14 at 774:11-18</p>
	UNDISPUTED
83	<p>Ciambor did not undertake to determine whether Malouf was receiving ongoing payments from LaMonde from 2008 to 2009.</p> <p>Q Were you aware that Mr. Hudson has testified in this proceeding that beginning early in 2008 he was aware that Mr. Malouf was receiving payments from Mr. Lamonde on an ongoing basis?</p> <p>A No.</p> <p>Q Did you ask him about that? At any point in time.</p> <p>A During the 2008-2009 period? No.</p> <p>Malouf Trial Transcript 11/19/14 at 799:4-11</p>
	DISPUTED
	<p>During 2008 and 2009, Mr. Ciambor interviewed Mr. Malouf, who said that with the sale of his Raymond James branch to Lamonde his relationship with Raymond James was effectively severed. PFOF 82.</p>
84	<p>Hudson did not object to Malouf receiving money from RJFS because it meant less borrowing from UASNM.</p> <p>I think he occasionally, you know – you know, you see from our complaint Dennis borrowed money from the company a lot. So a check from Moe meant less borrowing for me, or us as a company at times. So I was somewhat aware when he was in need of money or not. And he would come down and – you know, usually he would hit the American Express or something like that.</p> <p>Division's Ex. 229 Hudson Tr: 106:15-22</p>

	UNDISPUTED
85	<p>Gibbons, McGinnis, and Wolper agree that there are no rules, regulations, or laws setting maximum commissions on fixed income trades.</p> <p>Q Where would Mr. Malouf go in 2008 to find a publication that set forth the ranges of acceptable markups and commissions on bond trades?</p> <p>A I am not aware of a regulation that says the range is X. It doesn't exist. This is – the ranges are a matter – probably more of an art than a science, in that you have to look at what securities are being traded, their liquidity, availability, the difficulty of obtaining them, the – whether or not they're contained in the firm's inventory or not, and at what prices, and then kind of set a price within a range.</p> <p>Malouf Trial Transcript 11/18/14 at 454:1-11</p> <p>.....</p> <p>Q Has NASAA published a range of acceptable markups or commissions on bond trades, to your knowledge?</p> <p>A No. Not to my knowledge.</p> <p>Q On page 6, you're citing some information from FINRA – which we can agree regulates the broker-dealer industry; right?</p> <p>A Yes.</p> <p>Q Has FINRA published any range of acceptable markups or commissions on bond trades, to your knowledge?</p> <p>A No.</p> <p>Q Also on page 6 you're citing information from the Chartered Financial Analyst Institute – and, I believe, from the testimony from Mr. Hudson, we understood that he was a CFA – and maybe others within the firm as well; right?</p> <p>A That's a – it's two parts.</p> <p>Q I'm sorry. Withdrawn. But you recognize the CFA Institute is another industry authoritative source?</p> <p>A One of the premier ones, yes.</p> <p>Q And has the CFA published any range of acceptable markups or commissions on bond trades?</p> <p>A They may have. I don't know.</p> <p>Q Let's turn to page 7. And you cite SIFMA again for the eight principal-based guidelines used – excuse me – eight principal-based guidelines unique to the trading of bond securities. Do you see that?</p> <p>A Yes.</p> <p>Q Has SIFMA published any ranges of acceptable markups or commissions on bond trades?</p> <p>A Not to my knowledge.</p> <p>Q Section 1B on that same page is guidance from the SEC. Do you see that?</p> <p>A I do.</p> <p>Q Has the SEC published any acceptable ranges of markups or commissions on</p>

	<p>bond trades? A Not to my knowledge.</p> <p>Malouf Trial Transcript 11/18/14 at 525:9-526:23</p> <p>.....</p> <p>Q Before we get into discussion of this document, I want to ask you: Were you able to find any published standards with respect to acceptable ranges of markups and commissions on government bonds? A No. I'm unaware of any. Q Did you look for any? A I did. But – look, in all candor, I kind of knew that I wasn't going to find any, because this wasn't a subject that is new to me. But there isn't anything like that. The idea of an acceptable markup or an acceptable commission – you're dealing essentially with subjective standards. So, when one concludes whether a markup or a commission was reasonable and fair, it's going to be gauged in terms of the circumstances that are existent at the time of the particular trade, regarding the particular security. So, the idea that there is some safe harbor – you know, that if your markup or your commission falls within this range, you're good, and if it's outside the range, you're bad – that just doesn't exist. So, I didn't really look for it, because I knew it didn't exist.</p> <p>Malouf Trial Transcript 11/21/14 at 1399:10-1400:7</p>
	<p>DISPUTED</p> <p>These witnesses testified that there is no publication setting forth a fixed acceptable range of commissions on bond trades, not that there were no rules or regulations. Gibbons and McGinnis both testified that the commissions paid on Malouf's UASNM bond trades were excessive. <i>See also, In the Matter of Anderson</i>, Release No. 48352, 2003 WL 21953883, August 15, 2003 (finding reasonable commissions on Treasury Note trades to be 25 to 50 bps and commissions charged by Respondent to have been excessive).</p>
86	<p>UASNM never charged or received commissions.</p> <p>Q How is USA or UASNM compensated for the work they did for their clients? A Fee-only adviser. So no commissions, no 12b-1's, nothing like that. Just fees from clients, fees for assets under management.</p> <p>Malouf Trial Transcript 11/17/14 at 86:10-14</p>
	<p>DISPUTED</p> <p>Malouf was paid commissions for the bond transactions he routed through Lamonde.</p> <p>PFOF 6-17.</p>

87	LaMonde was the broker who actually placed bond trades on behalf of UASNM through Branch 4GE at the direction of certain UASNM employees.
	<p>DISPUTED</p> <p>No evidence cited and various witnesses have estimated that Malouf placed between 60% and 95% of the bond trades. FOF 76.</p>
88	<p>Hudson signed or authorized ACA to sign his name every Form ADV filed by UASNM. By doing so he and the investment adviser both certified, under penalty of perjury under the laws of the United States of America, that the information and statements made therein, including exhibits and any other information submitted, are true and correct.</p> <p>Q And underneath that it says, "... The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act?" Do you see that?</p> <p>A Yes.</p> <p>Q And do you also see your signature underneath that?</p> <p>A I see my name.</p> <p>Q Okay.</p> <p>A Yes.</p> <p>Q And you understood that when you uploaded this electronically that you had to affix your signature to it in order to upload; right?</p> <p>A I know that the way this typically happened was ACA would upload it, particularly in the end of the year, but it's my log-in.</p> <p>Q Okay. So, is it your testimony that you didn't sign this document?</p> <p>A I don't know if I actually uploaded this or not but certainly would have reviewed it, and it could be that ACA uploaded it, but I would have reviewed it before then.</p> <p>Q So, you would have authorized the uploading --</p> <p>A Right.</p> <p>Q -- regardless of whether it was you or ACA; correct?</p> <p>A Right.</p> <p>Malouf Trial Transcript 11/18/14 at 291:8-292:14</p>
	<p>UNDISPUTED</p>
89	<p>Keller claims the reason Malouf was terminated from UASNM was because of toxic atmosphere in office created by Malouf's relationship with Monica Villa, erratic behavior, and excessive use of AmEx.</p> <p>Q Finally, I want to ask you, Mr. Keller, do you have an understanding of the basis for why Mr. Malouf was terminated from his position as CEO at UASNM?</p> <p>A I do.</p> <p>Q And what is that?</p> <p>A Multiple items. First off, the affair that took place. It was completely destructive</p>

	<p>-- between Mr. Malouf and Ms. Villa -- poisoned the atmosphere of the office, was --</p> <p>Q Was that because Mr. Malouf had been married --</p> <p>JUDGE PATIL: Excuse me. Could you let him finish his answer before you --</p> <p>MR. McKENNA: I'm sorry. JUDGE PATIL: Just go ahead and finish it, and then I'll give him an opportunity to ask the question. Thank you.</p> <p>MR. McKENNA: Apologize.</p> <p>THE WITNESS: Sure.</p> <p>So that was, for me, the point at which it shattered my trust in Mr. Malouf. Secondly, although I didn't have access to our company's books, it became clear to me, in talking with Mr. Hudson in about February 2011, that the amount of draws that Mr. Malouf had taken from our firm's account -- in terms of personal draws, I believe, was in the order of \$400,000, and we didn't see that money getting put back in. There was, furthermore -- you know, it seemed an excessive use of the American Express card that was issued to our firm. Thirdly, it became apparent that -- regulatory concerns, as more information about best execution came to light and more awareness of the potential for Raymond James branch to be in a less than forthright arrangement. And, I believe, lastly, would be erratic behavior on the part of Mr. Malouf.</p> <p>Malouf Trial Transcript 11/20/14 at 1176:6-1177:17</p>
	<p>DISPUTED</p> <p>In the cited testimony Mr. Keller also testified that the reasons for Mr. Malouf's termination included the amount of draws (\$400,000), regulatory concerns regarding best execution, and Mr. Malouf's arrangement with RJFS/Lamonde.</p>
90	<p>Hudson claims the reason Malouf was terminated from UASNM was erratic behavior, not being professional, and financial irregularity.</p> <p>Q And can you tell us what events led to the termination of Mr. Malouf?</p> <p>A Well, I think a number of events. I think it started off with, uh-hmm, you know, some increase in what we felt was, you know, erratic behavior. We felt associations with people that were dangerous to the company, activity -- actions that were, you know -- that were not professional, and also a history of, you know, of financial irregularity with the company. And you know, then we proceeded towards the termination, and at the same time the other partners of the firm that signed affidavits that were going to quit if he came back and things like that. So that's kind of the -- you know, the -- and also the bond issue being something in our mind too, a number of -- there were a number of things lined out at the state court issues, the bond part being one of many. But the other ones that related to the business of the company.</p> <p>Malouf Trial Transcript 11/17/14 at 194:19-195:12</p>
	<p>DISPUTED</p> <p>In the cited testimony Mr. Hudson also testified that the reasons for Mr. Malouf's termination included associations with people that were dangerous to the company, the bond issue (the undisclosed excessive commissions), and other ones related to the business of the company.</p>

91	<p>Kopczynski was ultimately responsible for the compliance function at UASNM.</p> <p>Q But you do agree with me that the ultimate responsibility for those activities would fall back with you?</p> <p>A They would.</p> <p>Malouf Trial Transcript 11/21/14 at 1288:10-13</p>
	<p>DISPUTED</p> <p>Kopczynski had responsibility for the compliance function at UASNM while he was CCO, but he worked for Malouf, UASNM's President, CEO, majority shareholder and "top dog."</p> <p>FOF 197.</p>
92	<p>Kopczynski relied upon ACA's expertise to ensure disclosures on UASNM's Form ADV were right.</p> <p>Q Now, I did notice from your investigative testimony that you attributed -- well, that you relied heavily on ACA in that respect; is that fair to say?</p> <p>A I did. That's correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1287:25-1288:3</p>
	<p>DISPUTED</p> <p>Malouf has acknowledged that he had a clear conflict of interest and it should have been disclosed in the Forms ADV, the Forms ADV were not "right."</p> <p>Malouf agrees that the ongoing payment arrangement with Lamonde created a clear conflict of interest ever since he entered into the arrangement with Lamonde in early 2008. FOF 178.</p> <p>"Without a doubt," disclosure regarding the ongoing payments Malouf was receiving from Lamonde should have been in all the relevant ADV disclosures. FOF 193.</p>
93	<p>A consent order was entered in 2000 by the FDIC that banned John Schmalzer, who prepared SEC exhibits 201 through 211, from the banking industry. Schmalzer sought to have his industrywide ban lifted in 2004, and the FDIC denied his request finding that he had "provided no evidence of his rehabilitation and no circumstances against which to assess: his fitness, the effect his participation would have on the risk to safety and soundness of any financial institution, and the effect his participation would have on the public confidence in the financial institution."</p> <p><u>In re Schmalzer</u>, 2004 WL 2930775 (F.D.I.C.).</p>
	<p>UNDISPUTED</p>

94	<p>McGinnis testified that a CCO should spend more than a few hours a week on his duties.</p> <p>Q Okay. If I were to tell you that the chief compliance officer, Mr. Kopczynski, testified that he committed one hour per week to his function as a chief compliance officer at UASNM, would that surprise you?</p> <p>A It's a small firm. As I recall, I approximately less than 300 under management. As firms go, that's pretty small.</p> <p>Q Okay.</p> <p>A And I can't imagine that it would certainly be a 40-hour-a-week job. I don't know what the minimum would be, but I can't imagine it would be a full-time job.</p> <p>Q Could you imagine --</p> <p>A I spent 50 hours a week, but I was working with a \$12 billion organization.</p> <p>Q Understood. Can you imagine that it would be as little as one hour a week?</p> <p>A I have no knowledge. I can't.</p> <p>Malouf Trial Transcript 11/18/14 at 447:21-1288:3</p>
	<p>DISPUTED</p> <p>McGinnis offered no such testimony, but only testified that a CCO position at a small firm would not be a full-time job, and he had no knowledge as to whether it could be done in one hour per week.</p>
95	<p>Gibbons did not consider any misconduct by Kopczynski as CCO in his expert report.</p> <p>Q Okay. Did you consider the conduct of ACA in formulating your opinions?</p> <p>A I wasn't asked to review that, so I did not.</p> <p>Q Okay. Would that be the same answer if I asked you did you consider the conduct of the chief compliance officer?</p> <p>A Yes, that would be the same answer.</p> <p>Malouf Trial Transcript 11/19/14 at 511:7-13</p>
	<p>UNDISPUTED</p>
96	<p>McGinnis did not consider any misconduct by Kopczynski as CCO in his recommendations to UASNM.</p> <p>Q Did you consider the conduct of the CCO, Joseph Kopczynski, in rendering your opinions in the underlying state court litigation?</p> <p>A I'm sure I did, yes.</p> <p>Q Did you reach any conclusions with respect to whether or not his conduct fell into compliance either with the UASNM compliance manual or with securities laws in general?</p> <p>A That wasn't within the scope, no.</p> <p>Malouf Trial Transcript 11/18/14 at 445:25-446:-8</p>

	<p>*****</p> <p>Q And again, you didn't consider any misconduct by the chief compliance officer in your review? I think we've already established that. A I didn't consider any particular misconduct, no.</p> <p>Malouf Trial Transcript 11/18/14 at 465:4-8</p>
	<p>DISPUTED</p> <p>In the cited testimony, Mr. McGinnis specifically said that he did consider the conduct of Mr. Kopczynski.</p>
97	<p>McGinnis was not asked to identify which trades were directed by Malouf.</p> <p>Q As part of your endeavor, you were not asked to identify which trades were done by Mr. Malouf, as opposed to other investment lenders; correct? A No.</p> <p>Malouf Trial Transcript 11/18/14 at 438:24-439:2</p>
	<p>UNDISPUTED</p>
98	<p>Gibbons has not seen any information that would confirm whether Malouf directed any specific bond trade at issue.</p> <p>Q Did you undertake any effort in this report to identify any specific trades to determine or confirm that Mr. Malouf did a specific trade? A No.</p> <p>Malouf Trial Transcript 11/18/14 at 508:1-4</p>
	<p>UNDISPUTED</p>
99	<p>The ranges of "acceptable" markups/markdowns provided by Gibbons are not absolute.</p> <p>Q Well, can - will different people have different opinions what is a reasonable markup and commission? A Yes. Q So, you would agree with me that your ranges that you suggested here are not absolute? A I would agree with - yes.</p> <p>Malouf Trial Transcript 11/18/14 at 555:2-8</p>
	<p>UNDISPUTED</p>
100	<p>Gibbons was unable to find any studies regarding markups/markdowns.</p> <p>Q Okay. Did you encounter any studies that actually studied markups and</p>

	<p>commissions? A I looked very hard, and there just aren't any studies like that.</p> <p>Malouf Trial Transcript 11/18/14 at 544:5-8</p>
	UNDISPUTED
101	<p>Ciambor saw evidence during ACA's annual mock audits that UASNM was achieving best execution on fixed income investments.</p> <p>Q And what were you told were UASNM's practices for fixed-income trading? A Essentially, to seek out multiple prices and, essentially, execute as necessary based on the feedback they were getting from various counterparties they were looking to trade through. COURT REPORTER: "They were getting from various parties they were looking to trade through?" THE WITNESS: Broker-dealers. COURT REPORTER: Okay. BY MR. McKENNA: Q And how did that policy that UASNM conveyed they were employing compare or comport with your understanding of best execution applications? A It appeared to us that they were seeking clarification on pricing in accordance with industry best practice, requesting multiple bids from multiple broker-dealers or other counterparties.</p> <p>Malouf Trial Transcript 11/19/14 at 726:8-25</p>
	UNDISPUTED , that Ciambor saw evidence that UASNM was "seeking" best execution as opposed to "achieving" it.
102	<p>As a broker LaMonde had the power and authority to set the commission on trades placed through Branch 4GE.</p> <p>"Q. I mean, you had the power to control your commission, correct? "A. Only to lower it. "Q. Only to lower it correct? "A. Correct.</p> <p>Malouf Trial Transcript 11/24/14 at 1614:8-12</p>
	UNDISPUTED
103	<p>From 1999 to 2004 it was disclosed to UAS customers in the Form ADV that employees of UAS who were also registered with RJFS could receive commissions for trades placed through RJFS</p>
	DISPUTED
	Mr. Malouf cites no evidence for this proposition.

104	From 2004 to 2007 it was disclosed to UASNM customers in the Form ADV that employees of UASNM who were also registered with RJFS could receive commissions for trades placed through RJFS.
	<p>DISPUTED</p> <p>Mr. Malouf cites no evidence for this proposition.</p>
105	<p>The fact that RJFS made templates for the sale of branch offices available to its registered representatives, such as the PPA, is evidence that such sales are a relatively common occurrence.</p> <p>Q And is he accurate in saying that there is a buy-sell agreement template in the — available in the RJFS system?</p> <p>A That's correct.</p> <p>Q And the PPA that we looked at earlier today between Mr. Lamonde and Mr. Malouf, does that look like what was available as a template in the RJFS system?'</p> <p>A Yes, it does.</p> <p>Q And those templates are made available online to registered representatives with RJFS; right?</p> <p>A That's correct.</p> <p>Malouf Trial Transcript 11/19/14 at 703:11-21</p>
	<p>DISPUTED</p> <p>Mr. Bell testified that as of the end of 2007, he had been involved in less than five such occurrences:</p> <p>Q At this point in time, in December of 2007, how many times do you think you'd been involved in the sale and a purchase of a branch like this?</p> <p>A Personally, me being involved?</p> <p>Q Yes, sir.</p> <p>A We probably had maybe a handful.</p> <p>Q Less than five?</p> <p>A I would say, probably. In my region.</p> <p>Malouf Trial Transcript 11/19/14 at 673:17-24 (Bell):</p>
106	<p>In addition to the written PPA, Malouf and LaMonde had certain oral agreements and understandings with respect to the sale of Branch 4GE. Specifically Malouf and LaMonde understood that the total purchase price for Branch 4GE would be \$1.1 million based upon a multiple of trailing revenues and LaMonde could pre-pay towards the purchase price without penalty.</p> <p>Q The testimony has been that there was an agreement to prepay at some point?</p>

	<p>Tell us a little bit more about how that came up.</p> <p>A As I recall, and – Moe asked me if he – we knew what the number was, arbitrarily, because it was the same factor I used when I bought Universal Advisory Services. And I said, "Any way you get there, at the end of that time, you're" -- you know -- "you can pay it however you want." And he did.</p> <p>Malouf Trial Transcript 11/20/14 at 1049:11-20</p> <p>*****</p> <p>A We came to a decision after -- well, first of all, they forced me into a settlement. I had no money for my defense, I had no money for lawyers, and we entered into an agreement for them to pay me \$1.2 million, roughly, and pay \$300,000 to me at the time, of which half of it went to my soon to be ex-wife and the rest we both agreed would go into an escrow account at Bank of the West to settle any disputes with the Exchange, should there have been anything that was necessary in that transaction.</p> <p>Malouf Trial Transcript 11/20/14 at 1056:4-13</p> <p>*****</p> <p>A. Just to the extent that I could pay him faster if I needed to or wanted to. Q. And that oral understanding, when did that occur? A. The same time. Q. At the same time? A. (Nodding head.) Q. Yes? A. Yes.</p> <p>Malouf Trial Transcript 11/24/14 at 1599:22-1600:5</p>
	<p>DISPUTED</p> <p>Mr. Lamonde testified that the agreement was to pay close to 100% of commissions to Mr. Malouf.</p> <p>PFOF 6.</p>
107	<p>The PPA contemplated that LaMonde would pay for Branch 4GE using a portion of the revenues that the branch generated.</p> <p>Q. One element was the four-year payout period. How (did) the amount of the payout, did you discuss that with Mr. Malouf? A. It was going to be a percentage of the growth. Q. Percentage of the gross what? A. Commissions. Q. Gross commissions earned by --</p>

	<p>A. The branch. Q. As a whole? A. Correct. Q. So, every commission that the branch earned, Mr. Malouf was going to be entitled to 40 percent of that? A. Correct. Q. For four years? A. Correct.</p> <p>Malouf Trial Transcript 11/24/14 at 1595:20-1596:11</p>
	<p>DISPUTED</p> <p>The cited testimony indicates that Lamonde would pay for Branch 4GE using a portion of the <i>commissions</i> that the branch generated.</p>
108	<p>RJFS conducted annual examination of Branch 4GE which included a review of the corporate checking account records. RJFS would have seen evidence of the payments from LaMonde to Malouf during these reviews.</p> <p>“The Raymond James Financial Services Compliance department shall examine (or audit) each OSJ once per calendar year. The purpose of these visits is to assist the branch managers in efficiently operating their branches, as well as to ensure compliance with firm policy and regulatory requirements. Access to any records requested should be readily provided. The examination will focus on securities activity and overall compliance with regulatory requirements. In addition, at the time of the examination all computers utilized for securities-related business and all operational checking accounts will be reviewed. An examination may be conducted at a branch location at any time, without notice.”</p> <p>Ex. 124 at 1</p>
	<p>DISPUTED</p> <p>Mr. Bell testified as to his expectation that checking account records would have been reviewed; in fact, RJFS did not discover the checks from Lamonde to Malouf until June 2010.</p> <p>Q Was June 2010 the first time that you knew that Mr. Lamonde was making payments to Mr. Malouf? A Yes.</p> <p>Malouf Trial Transcript 654:10-12 (Bell).</p>

	<p>From: Kirk Bell Sent: Thursday, June 03, 2010 1:31 PM To: Maurice Lamonde Cc: Sarah Gray; Nicolo Carogal; Ian Beresford Subject: FW: Branch 4GE: Moe Lamonde / Dennis Malouf agreement</p> <p>Moe</p> <p>You and I communicated in 2008 regarding the buy/sell agreement between you and Dennis. After reviewing the preliminary examination report, there are multiple checks being written from you to Dennis. However, we have no official buy/sell agreement.</p> <p>Can you please send to us the buy/sell by the end of next week?</p> <p>Thanks Kirk</p> <p>Exh. 95.</p>
109	<p>From 2008 to 2011 the Branch 4GE corporate checking account records reflected the payments that LaMonde was periodically making to Malouf.</p> <p>A. Other than them going through my books. Q. By 'books' you mean -- A. Checkbook. Q. As we've seen, one year you think you didn't have it onsite, but you think you faxed it to them? A. Correct. Q. But you are not sure if you did? A. Correct. But they would have seen it prior years -- I mean, later years. Q. They would have reviewed your bank records? A. Correct. Q. And would have seen checks from you to Mr. Malouf? A. Correct.</p> <p>Malouf Trial Transcript 11/19/14 at 862:1-16</p> <p>See also Division's Exs. 107, 141, 147</p>
	<p>DISPUTED</p> <p>The checking account records reflecting payment were for the Maurice Lamonde LTD account:</p> <p>MAURICE LAMONDE LTD [REDACTED] ALBUQUERQUE NM 87113-1736</p> <p>Ex. 107.</p>
110	<p>RJFS actively reviewed commissions charged on bond trades placed through Branch 4GE</p>

to determine whether they were fair and reasonable.

RJFS Compliance Manual

Trade Execution & Review

Revised August 27, 2005
Last Revised January 15, 2008

RJFS Policy:

Trade Execution:

Trade orders may be placed through the Electronic Order Entry system or directly to the appropriate trading desk. Requests from customers to buy or sell securities are not accepted by e-mail, voice mail, fax, or any alternative method. Financial advisors may use discretion as to the price, at which, or the time when, an order given by a client for the purchase or sale of a *defined* amount of a *specified* security will be executed if the client grants them the authority to do so, however this authority ceases at the end of the same business day on which the client granted such discretion or the next business day if the order is received after the close of business.

Orders placed via Electronic Order Entry (EOE) must be verified on a daily basis to ensure proper receipt and execution at the home office.

Transactions that are executed by RJA as principal that appear to be potential best execution violations are price improved (corrected) each day to ensure that the customer receives at least the national best bid or offer (NBBO) at the time of execution.

Information for trades executed through Raymond James & Associates, including those executed on behalf of correspondent firm clients, is included in the documentation posted on the Raymond James public web site: http://www.rj.com/order_dislosure.htm.

For information on placing orders, please refer to the following links:

Order Entry Quick Reference Guides

- [Annities](#)
- [Equities / Options](#)
- [BondDesk Trading](#)
- [Mutual Funds](#)

Trading Desk Indices - RJNet

- [Products & Services > Stocks > Listed Trading > Placing Orders](#)
- [Products & Services > Fixed Income > Municipal Bonds](#)
- [Client Operations > Mutual Fund Operations > Trading](#)
- [Products & Services > Options > Indexes > Program Procedures](#)
- [Products & Services > Stocks > OTC Trading](#)
- [Products & Services > Securities](#)
- [Products & Services > Fixed Income](#)



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RJFS-SEC-UASNM-005189

Ex. 126

RJFS Compliance Manual

Mark-Ups/Downs

Revised August 28, 2009
Last Revised July 2, 2007

RJFS Policy:

Fixed Income Markups:

All customer executions must be at a price (including any mark-up/mark-down) that is fair and reasonable. The chart below outlines the department's retail mark-up guidelines.

ALL FI products except as noted	Max mark-up as % of price	CMOs, MBS, GNMA	Maximum mark-up as % of dollar price	Preferred Securities
1 year or less	1%	Avg. life < 5 years	Up to 2 points or 2.50%	2%
1-3 years	1.5%	Avg. life 3-7 years	2 points or 2.50%	
3-7 years	2%	Avg. life 7-10 years	2.5 points or 3.00%	
7-14 years	2.5%	Avg. life >10 years	3 points or 3.50%	
14 years +	3%			

**Commission and mark-downs for sale transactions of bonds are limited to 50% of the sales mark-up (noted above) up to a maximum of 1.5%. Commission and mark-downs for sale transactions of preferred securities are limited to the equity agency commission schedule.

With respect to Taxable Retail, consideration should be given, without limitation, to:

- Contemporaneous cost
- Timing between transactions
- Interest rate changes
- Credit quality changes
- New
- Institutional account trades in the same security
- Similar security trades



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RJFS-SEC-UAS-NM-004167

Ex. 127

DISPUTED

The cited evidence includes no evidence of "active review," but only of a general policy.

111 In or around April 2011, Malouf advised Kopczynski that he was going to file for divorce from his daughter and on May 2, 2011, Malouf filed for divorce.

A I was going to state that earlier Mr. Kopczynski pulled me into his office and told me that if I proceeded with the divorce, things were going to get very, very - I'm not sure what the word was, but it was a threat that I didn't take - I don't know. It's just what he said to me. Turned out to be true.

Q When was that made?

A A week - a week before.

Q And tell us a little bit more about that.

A I went into his room, he closed the door - his office. He closed the door and said to me, "You know, you don't need to go through with this divorce." I said, "Well, yeah, I do have to go through with this divorce." I mean, this has gone on from 2005 to now and I just - was not something I want to be in anymore. And he told me that I had the power and it was up to me how things were going to end up. And if they - if I didn't - if I didn't stop the divorce, things were going to go very poorly for me, were his words.

Malouf Trial Transcript 11/20/14 at 1053:18-1054:12

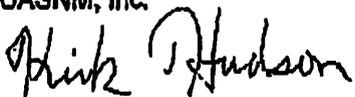
	<p>DISPUTED</p> <p>Mr. Kopczynski recalls no such conversation:</p> <p>Q Let's forget about the time frame. Do you remember a discussion with Mr. Malouf when he came and told you that he was going to divorce your daughter Aubrey?</p> <p>A I don't recall him specifically saying that. As a matter of fact, I don't specifically recall him having a conversation with me about that for several months in the first part of 2011.</p> <p>Q I'm talking specifically about the early part of May 2011, not long before you fired him. Are you saying you don't recall a conversation in which he told you he was going to divorce Aubrey?</p> <p>A I don't specifically recall that conversation.</p> <p>Q Okay. And I notice that you keep using the word "specifically" when I'm asking if you recall things. So, when I ask you if you recall things, regardless of whether you recall it specifically or just generally, I'd like you to respond either way; okay?</p> <p>A Sure.</p> <p>Q Do you have a general recollection of a conversation with Mr. Malouf in which he told you he was going to divorce your daughter?</p> <p>A I do not.</p> <p>Q So, is it true, then, that you don't remember telling him that if he divorced Aubrey things would not go well for him, or words to that effect?</p> <p>A I specifically refute that statement.</p> <p>Malouf Trial Transcript 11/21/14 at 1272:15-1273:19 (Kopczynski).</p>
112	<p>In the self-report letter to the SEC Kopczynski and Hudson blamed Malouf for all of the conduct now at issue.</p>

Earlier this year, we discovered that our clients who were managed by former UASNM shareholder and officer, Dennis James Malouf (CRD No. 1202043), may have been paying bond transaction markups and markdowns that were higher than the commission level otherwise obtainable for such bonds. As you know, UASNM is not a FINRA-regulated entity, and thus the company was not involved in placing the trades. Information began to emerge about the commission level that made it clear that the practice had to be addressed. Furthermore, and unbeknownst to other members of the Board, Mr. Malouf appears to have been receiving compensation for the bond trades by directing them to a Raymond James Branch that he formerly owned and was receiving remuneration from the branch manager of that branch, payments that only came to light in the ensuing litigation. As noted, Mr. Malouf was the President, CEO, and majority shareholder of UASNM at all times applicable. Upon discovering the bond trades, the other two members of the Board of Directors immediately initiated an inquiry into these transactions. Once we completed that inquiry and had gathered sufficient information regarding the bond trades, we terminated Mr. Malouf and subsequently retained counsel from Albuquerque Business Law, P.C., as well as the assistance of Capital Forensics, Inc. (Arlington Heights, IL), to aid the Board with its investigation, termination of Mr. Malouf, and the ensuing litigation necessitated by Malouf's resistance to the termination.

Mr. Malouf was the former owner of the branch office (of a separate brokerage) to which Mr. Malouf's clients were being directed. He claims to have sold the branch in January of 2008 in return for payments equal to 40% of the proceeds of the securities transactions for the specific accounts being sold, accounts that were supposed to be identified in an "Exhibit A." (See *Purchase of Practice Agreement*, attached hereto as Exhibit 1). We believe that these accounts were not identified at the time of the sale, nor were they ever identified. Neither Mr. Malouf nor the buyer of the practice, Maurice LaMonde, nor even Raymond James Financial, appears to have had the "Exhibit A" of applicable accounts. Instead of receiving continuing commissions, the purchaser of the branch office (LaMonde) re-allowed to Mr. Malouf substantially all the markup/markdown fees the branch received from advised client transactions directed by Mr. Malouf, none of which was known to the other principals of UASNM, and none of which was disclosed to the affected clients.

Utilizing discovery afforded by the lawsuit, we were able to obtain copies of checks made payable to Mr. Malouf by the purchaser of the branch office. We were able to compare the payments to Mr. Malouf with the amounts received by the manager of the branch from the UASNM clients' transactions, and we determined that the 40% figure detailed in the contract was not followed. See *RJFS Production and Payout Analysis*, attached hereto as Exhibit 2.

The lawsuit against Mr. Malouf culminated very recently in the settlement of the litigation with further agreement to the uncontested termination of Mr. Malouf, the surrender of Malouf's ownership interest in UASNM, and the creation of an escrow account to address the bond-trading activity. This account holds an amount the Board determined to be the maximum fair estimate of the alleged overpayments by the Malouf clients. See *Settlement Agreement and Mutual Release*, attached hereto as Exhibit 3.

	<p>We have prepared a very specific remedial plan to address client payments and wish to present to your office our plan. We look forward to working with you to bring closure to this issue in a way that addresses the past actions and also allows our company and its employees to continue serving our clients. We hope you will recognize that we have done all we could do under the circumstances and have successfully challenged the majority shareholder and President of the firm, and we hope your response to this self-report will facilitate client remediation and will allow this firm to simply move forward with its new management and ownership.</p> <p>Sincerely yours,</p> <p>UASNM, Inc.</p>  <p>Joseph J. Kopczynski, ChFC, CFP®, AIF® Founder and Chairman of the Board; Kirk Hudson, Vice President, and Director</p> <p>List of Exhibits:</p> <p>Exhibit 1 Purchase of Practice Agreement Exhibit 2 RJFS Production and Payout Analysis Exhibit 3 Settlement Agreement and Mutual Release</p> <p>Malouf's Ex 332</p>
	<p>DISPUTED</p> <p>The cited evidence indicates that UASNM self-reported its own violations, and UASNM took responsibility for its conduct, paying disgorgement and a penalty (<i>see</i> 114, below).</p>
113	<p>Neither Kopczynski nor Hudson were charged with wrongdoing or subject to any terms of the settlement.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention and Kopczynski and Hudson were responsible for various remedial actions required of UASNM in the settlement.</p>
114	<p>Under the settlement UASNM agreed to pay \$506,083.74 to customers for purportedly excessive commissions, and a \$100,000 civil money penalty.</p> <p>Q And the amount paid to UASNM customers was \$506,000, thereabouts?</p>

	<p>A I believe that to be correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1274:21-23</p> <p>*****</p> <p>Q UASNM also agreed, in its consent order, to pay a civil penalty of \$100,000; right?</p> <p>A That's correct .</p> <p>Malouf Trial Transcript 11/21/14 at 1371:21-23</p>
	UNDISPUTED
115	<p>Bell heard about a sale agreement between Malouf and LaMonde no later than May 2009.</p> <p>Q And to be clear, was May 2009 the first time you had heard about any sale agreement between Mr. Lamonde and Mr. Malouf?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 644:6-9</p>
	DISPUTED
	<p>As of May 2009 Mr. Bell did not believe there was yet an agreement:</p> <p>Q At that point did you have an understanding, after talking to Mr. Lamonde, as to whether this was a sale agreement or a transfer agreement?</p> <p>A My understanding, if I recall from the conversation, was it was related to an eventual sale of some sort.</p> <p>Q Now when you say "eventual sale," what do you mean by that?</p> <p>A Meaning that up until this point nothing had exchanged hands. There hadn't been any type of sale because we didn't have an agreement on file to suggest that.</p> <p>Q At this point, in May of 2009, did you have any understanding as to whether Mr. Lamonde had been making payments to Mr. Malouf?</p> <p>A No. Not at this time.</p> <p>Malouf Trial Transcript 11/19/14 at 642:25-643:15 (Bell).</p>
116	<p>The process for the sale of an RJFS branch typically involves RJFS providing the registered representatives with a sample agreement, getting a list of client accounts that would be part of the buy-sell agreement, and then moving the accounts according to that list.</p> <p>Q And how would that be different from a sale of a branch or a sale of clients?</p> <p>A Well, the way that we treat it -- with the sale of a book of clients or the sale of a business, we actually had a process at the time, and still do, where we provide to them some sample agreements, some sample language. We have to get a list of specific client</p>

	<p>accounts that would actually be a part of that buy-sell, as we call it, and then we get that document filed, executed – executed and then filed in the system, and then we move the accounts according to whatever that agreement states.</p> <p>Malouf Trial Transcript 11/19/14 at 633:12-23</p>
	UNDISPUTED
117	<p>The sale agreement between Malouf and LaMonde required LaMonde to make periodic payments to Malouf for the purchase of the branch.</p> <p>You've got it there. Yes, I just want – the second sentence there, "Lamonde purchased the branch pursuant to an agreement requiring him to make a series of ongoing payments to Malouf based upon the branch's revenues." You see that?</p> <p>A Yes.</p> <p>Q Was that in fact the agreement?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 924:3-10</p>
	UNDISPUTED
118	<p>The sale agreement between Malouf and LaMonde was substantially memorialized in the PPA, which was signed sometime between December 2007 and June 2010.</p> <p>Ex. 57</p>
	DISPUTED
	<p>Mr. Lamonde testified that the real agreement was to pay close to 100% of commissions to Mr. Malouf.</p> <p>PFOF 6.</p>
119	<p>Koczynski and Ciambor claim not to have asked about the payments for the sale of Branch 4GE despite knowing Malouf and Hudson had paid for UASNM with a series of payments over time.</p> <p>Q Did you ask him about the terms of the transaction?</p> <p>A I did not.</p> <p>Q Did you understand that frequently businesses are sold with payments being made over time?</p> <p>A Indeed I am.</p> <p>Q And in fact, those were the terms upon which you sold UAS to Mr. Malouf, right?</p> <p>A Correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1331:17-25</p>

	<p>DISPUTED</p> <p>No evidence is cited in support of this contention regarding Mr. Ciambor.</p>
120	<p>RJFS reviewed the Branch 4GE operational checking account annually to inspect for irregularities or payments that should not be occurring.</p> <p>Q If we go to the second page and look at number 4, it says, "The branch operational checking account was not available for review during the examination. In the future, please ensure that the account is accessible at the time of the examination." What's your understanding of that issue?</p> <p>A Well, during each year we like to review the operational checking account for the business, just to look for any -- any nuances or payments that maybe shouldn't occur.</p> <p>Malouf Trial Transcript 11/19/14 at 637:12-21</p>
	<p>DISPUTED</p> <p>The cited evidence cuts off Mr. Bell's response, which concludes:</p> <p>"In this case, that checking account, -- or, the ledger for the checking account was not available. And therefore they makred it as a deficiency."</p> <p>Malouf Trial Transcript 11/19/14 at 637:21-24.</p>
121	<p>Hudson told the Division during its investigation that the payments were a good thing because it meant Malouf would borrow less from UASNM.</p> <p>I think he occasionally, you know -- you know, you see from our complaint Dennis borrowed money from the company a lot. So a check from Moe meant less borrowing for me, or us as a company at times. So I was somewhat aware when he was in need of money or not. And he would come down and -- you know, usually he would hit the American Express or something like that.</p> <p>Division's Ex. 229 Hudson Tr: 106:15-22</p>
	<p>UNDISPUTED</p>
122	<p>The fact that UASNM was directing bond trades through Branch 4GE was not a secret at any time from 2004 to 2011.</p> <p>Q And during that period of time, 2004 through 2007, were you aware that Mr. Malouf would sometimes trade UASNM client funds through his Raymond James brokerage branch?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/17/14 at 132:14-18</p>

	<p>.....</p> <p>Q Now, I wanted to circle back again to the conflict of Raymond James. During this time, 2008 through 2010, I think we established that you knew that the branch had been sold, that Mr. Malouf was receiving payments from Mr. Lamonde, and you also knew that Mr. Malouf was sending a large majority of the bond trades that he did to Raymond James; correct?</p> <p>A Mm-hmm.</p> <p>Malouf Trial Transcript 11/17/14 at 253:11-18</p>
	UNDISPUTED
123	LaMonde could not afford to purchase Branch 4GE outright, and agreed to pay over time using revenues generated by the branch.
	DISPUTED
	No evidence is cited in support of this contention.
124	The quarterly variances between the commissions generated at Branch 4GE and the payments made to Malouf are inconsistent with an agreement to pay 100% of commissions.

Comparison of Commissions Earned by Lamonde from Malouf's Trades with Payments Made by Lamonde to Malouf			
	Commissions Earned by Lamonde from Malouf's Trades	Payments by Lamonde to Malouf	Difference (Payments - Commissions)
Total for First Quarter 2008	\$91,349.53	\$9,760.00	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$12,000.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.00	\$120,171.48	(37,453.48)
Total for Fourth Quarter 2008	\$85,062.95	\$108,100.00	(23,037.05)
Total for Year 2008	\$382,779.82	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.32	(14,084.39)
Total for Third Quarter 2009	\$125,761.34	\$146,640.48	(20,879.14)
Total for Fourth Quarter 2009	\$150,729.84	\$113,051.00	37,678.84
Total for Year 2009	\$352,034.29	\$365,210.25	(13,175.96)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$21,607.00	10,355.32
Total for Third Quarter 2010	\$66,813.50	\$23,786.00	43,027.50
Total for Fourth Quarter 2010	\$71,598.89	\$64,168.50	7,430.39
Total for Year 2010	\$301,426.84	\$230,742.79	70,684.05
Total for First Quarter 2011	\$37,660.27	\$14,482.00	23,178.27
Total for Second Quarter 2011	\$552.56	\$552.56	0.00
Total for Year 2011	\$38,212.83	\$15,034.56	23,178.27
TOTAL	\$1,074,454.38	\$1,068,084.13	6,370.25

Exhibit 100 - Payments-Commissions Comparison
 Exhibit 101 - Lamonde's 2008 - 2011 with Page 1001 statements (including in testimony Exhibit 104, 105, 106, & 107)
 Exhibit 102 - Lamonde's Payment Journal Statement for 2009 - 2011 relating to Lamonde's testimony.
 This Exhibit 103 - Payments by Lamonde to Malouf

Division's Ex. 203

DISPUTED

The cited evidence indicates that Lamonde's payments to Malouf totaled \$1,068,084.13, which equaled 99.4% of Lamonde's commissions. See also Exhibit A to Malouf's Brief which shows payments to Malouf for the first six months of 2008 were within 5% of the commissions earned.

125

From 2008 through the beginning of 2011 (12 quarters) there are only two quarters during which the payments made by LaMonde to Malouf are within 5% of the commissions earned. The average variance between the payments and commissions over the entire time frame is almost 30%.

Comparison of Commissions Earned by LaMonde from Malouf's Trades with Payments Made by LaMonde to Malouf			
	Commissions Earned by LaMonde	Payments by LaMonde to Malouf	Variance
Total for First Quarter 2008	\$91,349.52	\$95,760.05	(4,410.52)
Total for Second Quarter 2008	\$123,649.29	\$125,065.00	(1,415.71)
Total for Third Quarter 2008	\$82,718.05	\$120,171.48	(37,453.43)
Total for Fourth Quarter 2008	\$85,062.35	\$108,100.00	(23,037.65)
Total for Year 2008	\$382,779.21	\$449,096.53	(66,316.71)
Total for First Quarter 2009	\$40,959.18	\$57,850.45	(16,891.27)
Total for Second Quarter 2009	\$34,583.93	\$48,668.12	(14,084.19)
Total for Third Quarter 2009	\$125,761.94	\$146,640.48	(20,878.54)
Total for Fourth Quarter 2009	\$150,729.84	\$119,051.00	31,678.84
Total for Year 2009	\$352,034.89	\$371,610.05	(19,575.16)
Total for First Quarter 2010	\$130,052.13	\$121,181.29	8,870.84
Total for Second Quarter 2010	\$32,962.32	\$33,607.00	(644.68)
Total for Third Quarter 2010	\$66,813.50	\$22,786.00	44,027.50
Total for Fourth Quarter 2010	\$71,598.85	\$64,168.50	7,430.35
Total for Year 2010	\$201,426.80	\$141,682.79	59,744.01
Total for First Quarter 2011	\$17,660.27	\$14,482.00	3,178.27
Total for Second Quarter 2011	\$552.56	\$152.56	400.00
Total for Year 2011	\$18,212.83	\$14,634.56	3,578.27
TOTAL	\$1,074,454.38	\$1,069,084.13	5,370.25

Source: NYMEX, NYSE, and Payments-Commission Comparison;
 Sheet 1 - American Synthetic Futures Payoff Statements for 2008 - 2011; Sheet 2 - American Synthetic Futures Payoff Statements for 2009 - 2011 relating to American LaMonde;
 Total Excess Inc. - Payments by LaMonde to Malouf

Division's Ex. 203

DISPUTED

The cited evidence indicates that there are three such quarters, and the total variance is only .6%.

126 The significant and repeated variances between the commissions generated at Branch 4GE and the payments made to Malouf demonstrate that the similarity between the total commissions and total payments at the end of three years, upon which the Division relies, is more likely a coincidence than the product of a secret agreement.

DISPUTED

No evidence is cited in support of this contention.

127 If LaMonde had agreed to pay Malouf 100% of the commissions he could have easily calculated that amount.

	<p>DISPUTED</p> <p>No evidence is cited in support of this contention.</p>
128	<p>LaMonde was making payments to Malouf for the purchase of Branch 4GE when and as he could afford to do so.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention.</p>
129	<p>Kopczynski claimed that Malouf and LaMonde had a secret agreement in order to shift blame for UASNM's purported regulatory issues to Malouf.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention.</p>
130	<p>Malouf is not high on Kopczynski's "favorites list."</p> <p>Q Do you bear personal animosity towards Mr. Malouf? A Well, I wouldn't consider him high on my favorites list.</p> <p>Malouf Trial Transcript 11/21/14 at 1270:19-22</p>
	<p>UNDISPUTED</p>
131	<p>Because the payments made by LaMonde to Malouf were based upon branch revenues without regard for any specific transactions, they were not tied to the successful completion of any specific transactions.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention. Further, from 2008 through May 2011, Malouf received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 17.</p>
132	<p>Don Miller, who is Malouf and UASNM's accountant, reviewed the PPA and considered the nature of the payments that Malouf received. He determined the payments should not be treated as ordinary income because they were clearly not commissions.</p> <p>Q Okay. So, the -- these proceeds were, if I understand you correctly, reported as income originally? A Yes. So, he received -- at the same time -- the same year he sold the business, he received a Form 1099 miscellaneous, which is the form that you use when somebody provides a service and you have -- and you pay them for that service and, therefore, you</p>

	<p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Mr. Malouf failed to disclose his agreement with Lamonde.</p> <p>PFOF 6, 79, 82.</p>
14	<p>Malouf did not receive commissions. The payments received were in connection with the sale of the branch.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Malouf acted as a broker and received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.</p>
15	<p>Malouf did not receive "substantially all" the commissions from UASNM's bond trading. The amounts paid to Malouf were substantially different than the commissions generated by UASNM bond trades. The Division's own calculations indicate that, on a quarterly basis, payments to Malouf differed substantially from the commissions generated by UASNM bond trades by as much as 61%, and often differed by 20-40%. There was no reason and no incentive for LaMonde to pay commissions to Malouf. The payments were for the branch purchase.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Additionally, Lamonde's payments to Malouf totaled \$1,068,084.13, which equaled 99.4% of Lamonde's commissions, and From 2008 through May 2011, Malouf received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.</p>
16	<p>Reliance by an alleged perpetrator of securities fraud on professional advice may preclude a finding that he acted with the requisite scienter, where the professional "blesses" the perpetrator's work and is not a participant in the alleged fraud. <u>S.F.C. v. Huff</u>, 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).</p>

	<p>“Ultimately, the Court concludes that the SEC has not established scienter with regard to the accounting of the shareholders’ equity misrepresentations and omissions. Although this issue is very close, the auditors were clearly aware of the fact that they were counting letters of credit as assets and that Certified had workers’ compensation claims liabilities, making this issue different from the preceding one where the auditors had no knowledge of the fraudulent nature of the letters of credit. Second, the presentation of the accounting relating to the shareholders’ equity should depend upon GAAP principles, and, while the Court concludes that the auditors in this case did not make this aspect of the financial statements GAAP-compliant, they nevertheless “blessed” the accounting treatment of the shareholders’ equity as being in compliance with GAAP. Where a company provides its auditors with all of the information necessary for the auditors to make a determination regarding an acceptable way in which to treat the information under GAAP, the company should be able to rely upon the auditors’ advice, as long as the company did not conspire with the auditors in an effort to deceive. Here, the SEC has not presented evidence that the auditors were involved in the scheme to *1352 defraud, although the auditor LaForgia was under the SEC’s control and could have testified had the SEC wished to call him. Under these circumstances, the Court does not find the requisite scienter with regard to the material misrepresentations and omissions involving the accounting treatment of the shareholders’ equity.”</p>
	<p>UNDISPUTED, but noted that the cited authority requires all of the information necessary to make a determination be provided; Mr. Malouf hid the truth about his arrangement with Mr. Lamonde, so reliance on professional advice does not support his defense. PFOF 79, 82.</p>
17	<p>UASNM and Kopczynski CCO relied on ACA to perform mock SEC audits and to advise UASNM with respect to compliance issues. Malouf, as CEO, delegated the compliance responsibilities to, and relied on, Kopczynski to advise UASNM with respect to compliance issues and take appropriate action.</p>
	<p>DISPUTED</p> <p>Mr. Malouf may not legitimately rely on professional advice in this case because he hid the truth about his arrangement with Mr. Lamonde. PFOF 79, 82. <u>S.E.C. v. Huff</u>, 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).</p>
18	<p>Sections 206(1) and 206(2) make it unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly: (1) to employ any device, scheme, or artifice to defraud any client or prospective client; and (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.</p>
	<p>UNDISPUTED</p>

19	<p>The "device, scheme, or artifice" language [in Sections 206(1) and 206(2)] is the same as in Rule 10b-5 and the same standards apply, except as to scienter in the case of 206(2). <u>Carroll v. Bear, Stearns & Co.</u>, 416 F. Supp. 998, 1001 (S.D.N.Y. 1976).</p> <p>"In Count II of her proposed pleading, plaintiff purports to state a claim not raised in the original complaint based on Section 206 of the Investment Advisers Act, 15 U.S.C. s 80b-6. The wording of this provision,² making it unlawful "to employ any device, scheme or artifice to defraud", is identical to the language employed in R. 10b-5. Consequently, the same pleading requirements with respect to particularity and scienter apply which requirements we have already found not to have been met. See <u>Abrahamson v. Fleschner</u> (S.D.N.Y.1975) 392 F.Supp. 740, 750."</p>
	<p>UNDISPUTED</p>
20	<p>Under § 206(2) of the Advisers Act the actions must at least be negligent. <u>S.E.C. v. Steadman</u>, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).</p> <p>"Similarly, a violation of § 206(2) of the Investment Advisers Act may rest on a finding of simple negligence. See <u>SEC v. Capital Gains Research Bureau, Inc.</u>, 375 U.S. 180, 195, 84 S.Ct. 275, 284, 11 L.Ed.2d 237 (1963)."</p>
	<p>UNDISPUTED</p>
21	<p>Malouf did not violate Section 206(1) and (2) of the Advisers Act.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing.</p>
22	<p>Malouf did not have an undisclosed agreement with LaMonde to receive substantially all the commissions from UASNM's bond trading. As such, Malouf did not fail to disclose any "secret commissions."</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. And the undisclosed agreement was for Mr. Lamonde to pay close to 100% of commissions to Mr. Malouf.</p>

	regular business, issues or promulgates analyses or reports concerning securities.” 15 U.S.C. 80b-2(11).
	DISPUTED No evidence or authority is provided for the contention that Malouf was a “registered” investment adviser.
40	Malouf’s conduct of meeting with and soliciting clients and providing advice to investors as to the merits of securities is consistent and typical of an investment adviser. This conduct does not establish that Malouf was acting as a broker.
	DISPUTED Mr. Malouf’s solicitation and advice, combined with receiving commissions for bond transactions, shows that his conduct was consistent with a broker. PFOF 16, 17.
41	Malouf did not receive commissions. Payments Malouf received from LaMonde were a portion of revenues earned by Branch 4GE paid as consideration for the purchase of the branch pursuant to the PPA.
	DISPUTED Malouf acted as a broker and received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.
42	IM 2420-2 sets forth the procedure by which FINRA member firms may pay continuing commissions to non-members.
	DISPUTED IM 2420-2 must be interpreted in view of SEC No-Action Letters that provide guidance on the interpretation of FINRA rules and are relied upon in the securities industry. FOF 76.
43	IM 2420-2 provides that “the payment of continuing commissions in connection with the sale of securities is not improper so long as the person receiving the commissions remains a registered representative of a member of the Association. However, payment of compensation to registered representatives after they cease to be employed by a member of the Association — or payment to their widows or other beneficiaries — will not be deemed in violation of Association Rules, provided bona fide contracts

	call for such payment.”
	UNDISPUTED , but noted that IM 2420-2 must be interpreted in view of SEC No-Action Letters that provide guidance on the interpretation of FINRA rules and are relied upon in the securities industry. FOF 76.
44	<p>IM 2420-2 does not set forth any requirement that a broker retire from the securities industry.</p> <p>Q All right. So, you're reading that paragraph. Is there anything in there that references retirement as a requirement?</p> <p>A The information about how he can pay his widow or beneficiary?</p> <p>Q Well, it says, "to pay him or to his widow or other beneficiary."</p> <p>A Right. Right.</p> <p>Q So nothing in there about retirement?</p> <p>A Not to my knowledge.</p> <p>Malouf Trial Transcript 11/20/14 at 1044:12-21</p>
	<p>DISPUTED</p> <p>IM 2420-2 requires that a broker retire from the securities industry. PCOL 3-5.</p>
45	To establish its claim for aiding and abetting a violation of §§ 206(1), 206(2), and 207, the Division must show: (1) a primary or independent securities law violation; (2) the aider and abettor's knowing and substantial assistance in the primary violation; and (3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper. <u>S.E.C. v. Slocum, Gordon & Co.</u> , 334 F. Supp. 2d 144, 184 (D.R.I. 2004).
	UNDISPUTED
46	“The element of substantial assistance is met when, based upon all the circumstances surrounding the conduct in question, a defendant's actions are a ‘substantial causal factor’ in bringing about the primary violation.” <u>S.E.C. v. K.W. Brown & Co.</u> , 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007).
	UNDISPUTED
47	“The awareness requirement can be satisfied by extreme recklessness, which can be shown by red flags, suspicious events creating reasons for doubt, or a danger so obvious that the actor must have been aware of the danger of violations.” <u>S.E.C. v. K.W. Brown & Co.</u> , 555 F. Supp. 2d 1275, 1307 (S.D. Fla. 2007).

	<p>have to report that to the IRS using that form. In this case, these payments – my understanding was that they were for sale proceeds. In other words, these were payments he made to compensate Mr. Malouf for the sale of the business. So, that was an incorrect or inconsistent reporting of the sale proceeds. If he was going to report the sales proceeds, he should have put it on a 1099 for a -- B, for a sale of proceeds for a business, not for services. So, we call this in-and-out reporting. You put it in, you take it out, and then you put it in the correct place on the return. So, that -- it's not that it's not being reported on the tax return, it's that it's being reported in the correct place eventually. It's just that the IRS is going to look for it here, but we take it out here and move it to the Schedule D, and then we'll ask the payor to correct the 1099 reporting eventually.</p> <p>Q And then ultimately does that get reported as a capital gain rather than income? A Yes. Yes.</p> <p>Malouf Trial Transcript 11/24/14 at 1578:18-1579:22</p>
	<p>DISPUTED</p> <p>The cited testimony does not say that the payments to Malouf were clearly not commissions.</p>
133	<p>The payments from LaMonde to Malouf are capital gains from the sale of a business, not income.</p> <p>Q And then ultimately does that get reported as a capital gain rather than income? A Yes. Yes.</p> <p>Malouf Trial Transcript 11/24/14 at 1579:20-22</p>
	<p>DISPUTED</p> <p>The tax forms Mr. Miller referred to were incomplete drafts and have not been filed. Mr. Miller was also under the false impression that the Purchase of Practice Agreement was a bona fide contract entered into in late 2007.</p>
134	<p>LaMonde made payments to Malouf as an ex-broker to compensate him for the sale of his branch, not to compensate him for transactions.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention. Further, from 2008 through May 2011, Malouf received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 17.</p>
135	<p>Malouf read information regarding NASD 2420 on the RJFS intranet, and he reviewed the plain language of the rule on the FINRA website.</p> <p>Q Okay. I know you testified earlier that you did look at the Raymond James website. Somebody had directed you there.</p>

	<p>A Mm-hmm. Q I believe you also testified you looked at Rule 2420 on the federal website? A Correct. Q And did you feel like you had a working understanding of Rule 2420? A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1041:15-24</p>
	UNDISPUTED
136	<p>Malouf relied on NASD 2420 when selling Branch 4GE to LaMonde.</p> <p>Q All right. So, what did you do as you were investigating how to conduct the sale to Moe Lamonde? Why don't you walk us through that. A At first, that I was pointed to the transition website at Raymond James that has the methodology, and they cited the NASD rule. And I went out onto the internet and I read the NASD rule there, and I looked at the rules. You can't open up – et cetera, et cetera. And I thought that it was fairly straightforward and proceeded. Q Okay. I know you testified earlier that you did look at the Raymond James website. Somebody had directed you there. A Mm-hmm. Q I believe you also testified you looked at Rule 2420 on the federal website? A Correct. Q And did you feel like you had a working understanding of Rule 2420? A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1041:5-24</p>
	DISPUTED
	<p>It is undisputed that Mr. Malouf attempted to rely on NASD 2420 when Lamonde was forced to produce a written sales agreement in 2010, it is disputed that Malouf knew of or relied upon NASD 2420 when he sold the branch to Lamonde in 2007.</p>
137	<p>It would be unusual for a buy-sell agreement to be entered more than a year after accounts had been transferred.</p> <p>Q Okay. Now, would it make any sense to you that a year and a half after accounts had been transferred there would then be a buy-sell agreement? Is that consistent with anything in your prior experience? A No, it's not consistent.</p> <p>Malouf Trial Transcript 11/19/14 at 683:14-19</p>
	UNDISPUTED
138	<p>Malouf did not solicit new business or open new accounts for Branch 4GE after 2007.</p>
	DISPUTED

	<p>No evidence is cited in support of this contention. Further, Mr. Malouf acted as a broker dealer making bond transactions and received transaction-based compensation. PFOF 17, 22. Mr. Malouf's proposed COL 40 concedes that he solicited clients after 2007 and the evidence indicates that he would have traded bonds on behalf of those clients through Branch 4GE.</p>
139	<p>After selling Branch 4GE Malouf's securities work was limited to investment advisory work at UASNM.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention. Further, Mr. Malouf acted as a broker dealer making bond transactions and received transaction-based compensation. PFOF 17, 22.</p>
140	<p>When Malouf left RJFS he could have transferred to any other broker-dealer and continued doing business as a broker, but chose not to so he could focus his efforts on UASNM.</p> <p>Q Now, did you consider other options, in addition to selling the branch to Mr. Lamonde, at the point in time Raymond James told you that it was uncomfortable with your dual registration?</p> <p>A I looked at several lateral broker-dealers, and the complexion that it would take to move the business to that branch, yes.</p> <p>Q So, what would -- how would that change have been different than the sale of the branch to Mr. Lamonde?</p> <p>A That I would have maintained my registration would have been the biggest difference.</p> <p>Q So, you would essentially just move your registration from Raymond James to a different broker-dealer?</p> <p>A Yes.</p> <p>Q I assume that would have required the same sort of disclosure about your registration that had previously been made with UASNM?</p> <p>A Yes.</p> <p>Q If you had done that and had you disclosed it, could you have continued to receive the commissions on the business as you had before?</p> <p>A Yes.</p> <p>Q Did you ever consider not being associated with any broker-dealer and just moving your clients to UAS? Was that an option?</p> <p>A I considered it, but the smaller accounts would not have met -- they wouldn't have received the best treatment. I believe that Maurice would have taken care of the smaller accounts much better than even I would have.</p>

	<p>Malouf Trial Transcript 11/21/14 at 1039:17-1040:23</p> <p>DISPUTED</p> <p>No evidence actually supports the contention that Mr. Malouf could have transferred to another broker-dealer. No other broker-dealer so testified and this "evidence" is merely self-serving speculation by Mr. Malouf.</p>
141	<p>Malouf's actions are entirely consistent and typical with those of a registered investor adviser, not a broker.</p> <p>DISPUTED</p> <p>No evidence is cited in support of this contention. Further, Mr. Malouf acted as a broker dealer making bond transactions and received transaction-based compensation. PFOF 17, 22.</p>
142	<p>To the extent Kopczynski did not fully know the terms of Malouf's agreement with LaMonde, he should have asked.</p> <p>Q So, why didn't you ask him? A I believe I should have asked him.</p> <p>Malouf Trial Transcript 11/21/14 at 1332:16-17</p> <p>DISPUTED to the extent "should" constitutes a legal conclusion without any basis in law, but only based on the opinion of Mr. Kopczynski.</p>
143	<p>Hudson did not ask about or investigate the agreement between Malouf and LaMonde because he did not think it was part of his role or any of his business.</p> <p>A Well, again, I thought that this is their transaction, and you know, in my role at UAS, my role was to investigate that kind of stuff. And it was a transaction between the two of them, but I did not investigate it.</p> <p>Malouf Trial Transcript 11/18/14 at 140:23-141:2</p> <p>UNDISPUTED</p>
144	<p>A CCO should review and approve drafts of a website before it is published and review the website to ensure what was approved actually made it on the screen.</p> <p>Q Sure. You'd look at the website; right? A Sure. Well, you'd look at the drafts before they ever go up on the website. Q Right. A And then you look at the website to make sure that what you approved actually made it onto the screen.</p> <p>Malouf Trial Transcript 11/18/14 at 449:10-16</p> <p>DISPUTED to the extent "should" constitutes a legal conclusion without any basis in law,</p>

	<p>but only based on the opinion of Mr. McGinnis, who did not testify that one "should" review a website, but only that he did.</p>
145	<p>Malouf reasonably believed that Kopczynski, Hudson, and Ciambor were all sufficiently experienced and qualified for their positions and the attendant duties.</p> <p>Q And I think we've already talked about the ownership shares, so I won't go back over that. From that point forward, could you describe the roles of yourself and Mr. Hudson and Mr. Kopczynski within the UAS organization just briefly.</p> <p>A Mr. Hudson was the managing partner and chief financial officer. His credentials and background led him to a very solid person there.</p> <p>Malouf Trial Transcript 11/20/14 at 1018:3-10</p> <p>.....</p> <p>Q Why did you delegate the compliance functions to Mr. Kopczynski?</p> <p>A When I first came to Universal Advisory Services, I wasn't quite sure what an ADV was. And he was a registered 24 principal and had all the extenuating licenses, credentials, navigation tools, through the regulators; and he was an accredited investment fiduciary and a certified financial planner. He had all the credentials necessary, in my eyes, at that time, to safely navigate us through the waters.</p> <p>Q During the period 2008 until you were terminated, did you believe that Mr. Kopczynski - well, actually, I guess, through the end of 2010, because he ceased being the chief compliance officer at the end of 2010; right?</p> <p>A Yes.</p> <p>Q From 2008 through 2010, did you believe he was attentive to his duties as the CCO?</p> <p>A Until December of 2010 I thought that to be true.</p> <p>Q Did you have any reason to think he was not attending to those duties?</p> <p>A Not at that time.</p> <p>Malouf Trial Transcript 11/20/14 at 1062:9-1063:6</p> <p>.....</p> <p>Q So, Mr. Ciambor told you that he worked at the SEC?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1127:18-20</p>
	<p>UNDISPUTED</p>
146	<p>At best, the evidence showed that from time to time another broker-dealer offered a better price and the trade was done at that broker-dealer, or RJFS offered to match the price.</p> <p>A "Sometimes Raymond James had the best bid, so I would buy through them. Other times, they would not initially have the best bid, so I would have to match the best bid in order to get the business. The trades were checked from time to time for</p>

	<p>compliance. I always sought to seek the best execution on all bond trades including those concerned with Raymond James" -- or, "concerning Raymond James."</p> <p>Malouf Trial Transcript 11/20/14 at 1007:24-1008:6</p> <p>*****</p> <p>Q What if you came to Raymond James with a Schwab bid that might have been a little below the Raymond James price, what might happen then?</p> <p>A I'd give them the opportunity to beat it, and sometimes all they could do is match it. But again, on occasions I would run it through Raymond James and let them execute it. I worked in the same building with these people and didn't think the client was being harmed at all.</p> <p>Malouf Trial Transcript 11/20/14 at 1225:6-14</p>
	<p>DISPUTED</p> <p>The evidence showed that in at least some cases, shopping bond trades among brokers resulted in a broker offering a better price than Raymond James. PFOF 41.</p>
147	<p>There was no evidence of a trade placed at RJFS when a better price was available at the time from another broker-dealer.</p>
	<p>DISPUTED</p> <p>No evidence is cited in support of this contention, and Mr. Malouf's failure to seek best execution resulted in payment of excessive commissions. PFOF 48-59.</p>
148	<p>Malouf reviewed the condition of bond markets generally each morning.</p> <p>A I'd always arrive very early, and I had all the financial information from various literature -newspapers, Wall Street Journal, et cetera. Spent my time -- fair share of time, on squawk box.</p> <p>Malouf Trial Transcript 11/20/14 at 1103:1-4</p>
	<p>DISPUTED</p> <p>The cited evidence indicates merely that Respondent read the Wall Street Journal and watched Squawk Box on television.</p>
149	<p>When Malouf reviewed BondDesk information provided by LaMonde he knew it reflected data from 160 or more different broker-dealers and that he was being shown the 5 best prices/bid/ask on a particular bond.</p> <p>Q And so, on this BondDesk marketing piece, do you see in the top paragraph there -- why don't you go ahead and read that into the record.</p>

	<p>A "In the industry there is such" -- "there is much capital ... at risk, success is dependent upon the liquidity and execution. With over 125,000 live quotes and more than 10,000 bid-wants, the BondDesk ATS executes 20,000 transactions per day."</p> <p>Q "Executes" --</p> <p>A Sorry.</p> <p>Q Right. "Executes 20,000 transactions per 2 day"?</p> <p>A Mm-hmm.</p> <p>Q Right? Okay. So, down to the left-hand box there, about halfway down, it talks about "access commingled inventory." Do you see that? "From over 160 broker-dealers"?</p> <p>A Yes.</p> <p>Q Do you see where I am?</p> <p>A Mm-hmm.</p> <p>Q "And link to a distribution network of over 2,000 broker-dealers." Do you see that?</p> <p>A Yes.</p> <p>Q "And more than 100,000 financial advisers." Did you understand that to be the case when you were working at Raymond James with this tool?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/20/14 at 1100:16-1102:19</p>
	<p>DISPUTED</p> <p>There is no cited evidence supporting that Mr. Malouf "was being shown the 5 best prices/bid/ask on a particular bond."</p>
150	<p>Some broker dealers are simply better than others at transacting certain kinds of securities.</p> <p>A Well, normally, a bond trader would know what broker-dealers do good jobs on different types of bonds. So, some broker-dealers do better jobs on municipals, some do better jobs on corporates, some are just plain price competitive and they do great jobs on agencies and Treasuries.</p> <p>Malouf Trial Transcript 11/18/14 at 552:2-7</p>
	<p>UNDISPUTED</p>
151	<p>The RJFS commission grids are integral to RJFS' policies and procedures to ensure it met its best execution obligations.</p> <p>Q "Is largely determined by our clearing Broker/Dealer." And then it says, "Raymond James Financial Services has determined that the standard commission schedules provide a good indication of what is reasonable compensation in instances where the firm is not acting as a market maker, and therefore will not permit the commission on any agency trades to exceed the firm's published standard commissions."</p> <p>Malouf Trial Transcript 11/20/14 at 1111:8-15</p>

RJFS Compliance Manual - Mark-Ups/Downs

RJFS [Redacted]

NOT FOR CLIENT USE

RJFS Compliance Manual

Mark-Ups/Downs

Revised August 28, 2009
Last Revised July 2, 2007

RJFS Policy:

Fixed Income Markups:

All customer executions must be at a price (including any mark-up/mark-down) that is fair and reasonable. The chart below outlines the department's retail mark-up guidelines.

ALL FI products except as noted	Max mark-up as % of price	CMOs, ABS, GRMA	Maximum mark-up as % of dollar price	Preferred Securities
1 year or less	1%	Avg. life < 5 years	Up to 2 points or 2.50%	2%
1-3 years	1.5%	Avg. life 5-7 years	2 points or 2.50%	
3-7 years	2%	Avg. life 7-10 years	2.5 points or 3.00%	
7-14 years	2.5%	Avg. life > 10 years	3 points or 3.50%	
14 years +	3%			

*Commission and mark-downs for sale transactions of bonds are limited to 50% of the sales mark-up (noted above) up to a maximum of 1.5%. Commission and mark-downs for sale transactions of preferred securities are limited to the equity agency commission schedule.

With respect to Taxable Retail, consideration should be given, without limitation, to:

- Contemporaneous cost
- Timing between transactions
- Interest rate changes
- Credit quality changes
- New
- Institutional account trades in the same security
- Similar security trades



see www.rjfs.com/Compliance/Markups_Downs.html (07/27/07 4:09:33 PM)

RJFS-SEC-UASNM-004157

Division's Ex. 127

DISPUTED

There is no cited evidence indicating that the "commission grids are integral." The RJFS commission grids are also only applicable to RJFS, they are not applicable to an investment adviser company like UASNM. PFOF 36.

152

It was not determined which Forms ADV introduced were drafts and which ones were finals that were filed and/or disseminated.

Q Would you agree with me that you would at least skim or review the ADVs?

A Yes, from time to time. But let me pause and say that I'm not sure what ADV I was looking at, as there were amendments in three years. So, what I looked at and what was filed or what was kept, I don't know. My earlier testimony said, yes, I did. But now that I found out that there were so many changes that Mr. Kopczyński and, I guess, Mr. Hudson were making to the ADV, I'm not sure what it is that I looked at. I'm not sure

	<p>which one or what language was used and what wasn't used in the Part II. Not Part II, the second half.</p> <p>Malouf Trial Transcript 11/20/14 at 992:12-23</p> <p>*****</p> <p>Q I understand that. And as I said, this is a chart recreated by the SEC. All I'm trying to determine is, how -- how we could ever know which of these Forms ADV were actual and which were just draft. And I'm sort of relying on you, as the chief compliance officer, to help me with that.</p> <p>A As I sit here right now, I couldn't help you with that.</p> <p>Malouf Trial Transcript 11/21/14 at 1352:7-15</p>
	<p>DISPUTED</p> <p>All or most of the Form ADVs created between October 1, 2009 and April 12, 2010, portions of which are reflected in Exhibit 193, were provided to UASNM clients. PFOF 100.</p>
153	<p>Kopczynski claims he reviewed and approved the content posted on UASNM's website and to ensure the accuracy of the firms Forms ADV.</p> <p>Q Did you ever look at the website with your chief officer hat on to ensure that the representations on there were accurate?</p> <p>A Sure.</p> <p>Q Did you look at other marketing materials with the same view?</p> <p>A Yes.</p> <p>Malouf Trial Transcript 11/21/14 at 1354:12-18</p>
	<p>UNDISPUTED</p>
154	<p>Under its agreement with UASNM, ACA was obligated to provide changes to the Forms ADV when necessary, submit them to Kopczynski for approval, and ensure they were filed.</p> <p>Q So, just to summarize and to make sure that I'm clear on your testimony. Your decision, as the chief compliance officer of UASNM, was to not take any further action on the disclosure of the conflict that you knew existed unless ACA told you to do that?</p> <p>A Not tell me to do it --</p> <p>Q And -- I'm sorry. Go ahead.</p> <p>A Their responsibility to us was to change the ADV, submit them to us for our approval, and then file them.</p> <p>Malouf Trial Transcript 11/21/14 at 1342:11-20</p>
	<p>UNDISPUTED</p>

155	<p>Kopczynski claims to have reviewed the UASNM website and believed it to be accurate in 2008.</p> <p>Q Actually, my question wasn't that at all. My question previously was, did you actually review the website and the marketing materials after they'd been published to make sure that they were factually accurate?</p> <p>A I believe I did.</p> <p>Q So, then, the question is, if they were factually accurate -- and you know that the SEC is taking issue with those; right?</p> <p>A Yes.</p> <p>Q Then did those just escape your attention, was it an oversight, or did you not review those particular ones?</p> <p>A No, I'm pretty sure that I reviewed them. And I would also say that I would believe them to be accurate at the time.</p> <p>Malouf Trial Transcript 11/21/14 at 1356:14-1357:4</p>
	<p>UNDISPUTED</p>
156	<p>Neither Hudson nor Kopczynski took any action to remove language from the UASNM website regarding UASNM being "free of conflicts of interest" until 2012, despite being specifically advised by ACA in its 2007 and 2009 annual reports that such language was problematic.</p> <p>Q What did you do?</p> <p>A Well, I believed it to be accurate at the time.</p> <p>Q Do you see the recommendation of ACA to the right of that?</p> <p>A I do.</p> <p>Q Does it recommend that UASNM amend that language?</p> <p>A It does.</p> <p>Malouf Trial Transcript 11/21/14 at 1363:13-21</p> <p>.....</p> <p>Q And I guess, by this point now, in 2012, approximately five years after you were first advised by ACA, you've now corrected the problem?</p> <p>A Correct.</p> <p>Malouf Trial Transcript 11/21/14 at 1369:21-24</p>
	<p>UNDISPUTED</p>
157	<p>In October 2009 Kopczynski, Hudson, and Ciambor knew that UASNM was directing trades through RJFS, but they did nothing to ensure disclosure on UASNM's Form ADV that RJFS was a broker-dealer through which UASNM did business.</p>

	<p>A Yes, they were directing trades through Raymond James. Q And you see in item 12.B that Raymond James is not disclosed as a broker-dealer -- that is -- that UAS sends business through; right? A Yes. Q And you would agree with me that it should have been disclosed? A Yes.</p> <p>Malouf Trial Transcript 11/19/14 at 825:20-826:3</p>
	<p>DISPUTED</p> <p>Prior to 2010, Mr. Malouf did not tell his employees at UASNM that he was receiving payments from Lamonde based on commissions earned on trades he made through Lamonde's Raymond James branch, and told Ciambor that his relationship with RJFS had been severed. PFOF 79, 82. Thus, Mr. Malouf concealed the information that should have been disclosed.</p>

DIVISION'S RESPONSE TO MALOUF'S PROPOSED CONCLUSIONS OF LAW

No.	Proposed Conclusion of Law
1	Section 17(a)(1) makes it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to employ any device, scheme, or artifice to defraud.
	UNDISPUTED
2	"To establish a violation of § 17(a)(1), the Division must prove (1) a material misrepresentation or materially misleading omission, (2) in the offer or sale of a security, (3) made with scienter." <u>S.E.C. v. Morgan Keegan & Co., Inc.</u> , 678 F.3d 1233, 1244 (11th Cir. 2012)
	DISPUTED A violation of Section 17(a)(1) may also be proven by a scheme to defraud. COL 13.
3	Scienter can be found where a defendant acted with an "intent to deceive, manipulate, or defraud." <u>S.E.C. v. Steadman</u> , 967 F.2d 636, 641 (D.C. Cir. 1992), quoting <u>Ernst & Ernst v. Hochfelder</u> , 425 U.S. 185, 193 (1976). "The Supreme Court has made clear that to establish a violation of section 10(b) of the Securities Exchange Act, Rule 10b-5, section 17(a)(1) of the Securities Act, and section 206(1) of the Investment Advisers Act, the SEC must prove that the appellants acted with an "intent to deceive, manipulate, or defraud" . . ."
	UNDISPUTED
4	Scienter may include "severe recklessness" or "extreme recklessness," which is limited to those highly unreasonable omissions or misrepresentations that involve not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and that present a danger of misleading buyers or sellers which is either known to the defendant or is so obvious that the defendant must have been aware of it. <u>S.E.C. v. Huff</u> , 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010). "This type of deliberate ignorance involving Certified's ability to obtain its lifeblood of

	workers' compensation insurance was, at best, severely reckless and satisfies the scienter element. Indeed, Certified and Huff's actions evidence an extreme departure from the standard of ordinary care and were severely reckless."
	UNDISPUTED
5	To establish a violation of § 17(a)(3), the Division must show (1) a material misrepresentation or materially misleading omission, (2) in the offer or sale of a security, (3) made with negligence." <u>S.E.C. v. Morgan Keegan & Co., Inc.</u> , 678 F.3d 1233, 1244 (11th Cir. 2012)
	DISPUTED A violation of Section 17(a)(3) may also be proven by a scheme to defraud. COL 13.
6	Section 17(a)(3) focuses on the "effect of particular conduct on members of the investing public, rather than upon the culpability of the person responsible." <u>Aaron v. S.E.C.</u> , 446 U.S. 680, 697 (1980).
	UNDISPUTED
7	Section 10(b) makes it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
	UNDISPUTED
8	Rules 10b-5(a) and 10b-5(c), promulgated under § 10(b), make it unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.
	UNDISPUTED

9	<p>“To prove a violation of § 10(b) and Rule 10b-5, the Division must show (1) a material misrepresentation or materially misleading omission, (2) in connection with the purchase or sale of a security, (3) made with scienter.” <u>S.E.C. v. Morgan Keegan & Co., Inc.</u>, 678 F.3d 1233, 1244 (11th Cir. 2012).</p>
	<p>DISPUTED</p> <p>A violation of 10(b) and Rule 10b-5 may also be proven by a scheme to defraud. PCOL 10-12.</p>
10	<p>Malouf did not violate Section 17(a)(1) and 17(a)(3) of the Securities Act.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division’s post-hearing briefing.</p>
11	<p>Malouf did not violate Section 10(b) of the Exchange Act and Rule 10b-5(a) and 10-b-5(c).</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division’s post-hearing briefing.</p>
12	<p>Malouf did not commit a manipulative or deceptive act in furtherance of a scheme.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division’s post-hearing briefing.</p>
13	<p>Malouf did not have an undisclosed agreement with LaMonde. The PPA, and any attendant understanding regarding accelerated payments, constituted a “bona fide contract” for the sale of Branch 4GE.</p>
	<p>DISPUTED</p>

	PFOF 6.
23	Section 207 of the Advisers Act 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.
	UNDISPUTED
24	In order to establish the element of willfulness, the Division must show that Mr. Malouf intended to engage in the action alleged regardless of his knowledge that the act constituted a violation of the securities law. <u>S.E.C. v. Moran</u> , 922 F. Supp. 867, 900 (S.D.N.Y. 1996).
	UNDISPUTED
25	<p>Reliance on professional advice negates a finding of willfulness. <u>S.E.C. v. Slocum, Gordon & Co.</u>, 334 F. Supp. 2d 144, 181-82 (D.R.I. 2004).</p> <p>“The language in the ADV Form that the SEC argues compelled this disclosure referred not to bank accounts or to the process by which SG & C facilitated firm trades, but rather asked Defendants to disclose the procedures the firm employed to address conflicts of interest created by engaging in firm trading and client trading simultaneously. Gordon, who prepared the ADV Form for SG & C, testified that he believed SG & C’s account structure was in compliance with the SEC at the time. This assumption was supported by both the two previous SEC examinations, which failed to note SG & C’s account structure as a problem, and the firm’s annual surprise examination by independent auditors Deloitte & Touche, which also failed to identify SG & C’s account structure as a questionable practice. Indeed, Gordon testified that he believed SG & C’s account structure was based on the Gardner and Preston Moss No-Action Letter issued by the SEC in 1982. <i>See also</i> Exhibits AA and 39. Gordon’s testimony on these issues was unrebutted by the Commission, and the Court finds Gordon’s reliance on these external evaluations reasonable.</p> <p>In light of the foregoing, the Court is not persuaded that Gordon knew that the SG & C account structure in place at the time violated federal securities laws. Thus, the Court cannot conclude that he intentionally failed to disclose or willfully omitted this information from the firm’s filings. Whether Gordon acted with the requisite mental state for his actions to constitute a violation of the Advisers Act is *182 a question of fact. <u>Valicenti Advisory Services, Inc. v. SEC</u>, 198 F.3d 62, 65 (2d Cir.1999). Here, the Court does not find that Gordon intentionally or willfully omitted material facts from his SEC filings. As willfulness is an element of a Section 207 violation, <i>see</i> 15</p>

	U.S.C. 80b-7, the Court concludes that the Commission failed to meet its burden on this claim, and rules in favor of the Defendants on Count 6.”
	<p>DISPUTED</p> <p>Mr. Malouf may not legitimately rely on professional advice in this case because he hid the truth about his arrangement with Mr. Lamonde. PFOF 79, 82. <u>S.E.C. v. Huff</u>, 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).</p>
26	Kopczynski reasonably relied on ACA to evaluate what information should be disclosed on UASNMs Forms ADV. Similarly, Malouf reasonably relied upon Kopczynski and ACA.
	<p>DISPUTED</p> <p>Mr. Malouf may not legitimately rely on professional advice in this case because he hid the truth about his arrangement with Mr. Lamonde. PFOF 79, 82. <u>S.E.C. v. Huff</u>, 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).</p>
27	Malouf did not make any statements or omissions on any Form ADV. All UASNMs Forms ADV were signed by Hudson, who attested to their accuracy and truthfulness under penalty of perjury. Malouf did not sign the Forms ADV or attest to their accuracy.
	<p>DISPUTED</p> <p>Mr. Malouf, as CEO, president, and majority shareholder of UASNMs, assisted in the preparation of UASNMs Forms ADV, had control over the Forms ADV, and had final and ultimate responsibility for UASNMs Forms ADV between 2006 and the end of 2010. PFOF 98, 99, 102, 103.</p> <p>The Supreme Court’s decision in <i>Janus Capital Group, Inc. v. First Derivative Traders</i>, 131 S.Ct.2296 (2011), regarding who is a “maker” of statements under Section 10b of the Exchange Act is not applicable to other sections of the securities laws. <i>SEC v. Daijotis</i>, 2011 WL 3295139, at *5-6 (N.D. Cal. Aug. 1, 2011) (holding that “Janus was not a touchstone to change myriad laws that happen to use the word ‘make’ - it was a decision interpreting primary liability under Rule 10b-5”).</p>
28	The disclosures in UASNMs Forms ADV were sufficient to put a reasonable investor on notice of potential conflicts of interest with RJFS. In numerous Form ADV filings, UASNMs disclosed that (a) Malouf had an ownership interest in the RJFS branch and may receive compensation for transactions executed through the branch; (b) one or more employees of UASNMs were also associated with RJFS and may receive compensation on transactions executed through the branch; and/or (c) that Malouf was associated with RJFS.

	<p>DISPUTED</p> <p>Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV. PFOF 104.</p>
29	<p>Rule 206(4)-1(a)(5), promulgated under § 206(4), provides that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading.</p>
	<p>UNDISPUTED</p>
30	<p>"To establish its claim for aiding and abetting, the Division must show: (1) a primary or independent securities law violation by an independent violator; (2) the aider and abettor's knowing and substantial assistance to the primary securities law violator; and (3) awareness or knowledge by the aider and abettor that his role was part of an activity that was improper." <u>S.E.C. v. Slocum, Gordon & Co.</u>, 334 F. Supp. 2d 144, 184 (D.R.I. 2004)</p>
	<p>UNDISPUTED</p>
31	<p>"While it is unnecessary to show that an aider and abettor knew he was participating in or contributing to a securities law violation, there must be sufficient evidence to establish 'conscious involvement in impropriety.'" <u>Id.</u> (quoting <u>Monsen v. Consolidated Dressed Beef Co.</u>, 579 F.2d 793, 799 (3d Cir.1978). "This involvement may be demonstrated by proof that the aider or abettor 'had general awareness that his role was part of an overall activity that [was] improper.'" <u>SEC v. Coffey</u>, 493 F.2d 1304, 1316 (6th Cir. 1974).</p>
	<p>UNDISPUTED</p>
32	<p>Malouf did not aid and abet or cause UASNM's violations of Section 206(1), 206(2) and 207 of the Advisers Act.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing.</p>

33	Malouf did not aid and abet or cause UASNM's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5)
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing.</p>
34	Malouf did not fail to disclose his receipt of payments from LaMonde.
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Mr. Malouf failed to disclose his agreement with Lamonde to UASNM clients and others.</p> <p>PFOF 6, 79, 82.</p>
35	To establish its claims under § 15(a)(1) or § 15C(a)(1)(A), the Division must show that Malouf was a "broker," meaning "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A).
	UNDISPUTED
36	<p>The Exchange Act does <i>not</i> define "effecting transactions," and various factors determine whether a person is a "broker." <u>S.E.C. v. Kramer</u>, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011).</p> <p>"Because the Exchange Act defines neither "effecting transactions" nor "engag[ing] in the business," an array of factors determines whether a person qualifies as a broker under Section 15(a). See <u>DeHuff v. Digital Ally, Inc.</u>, 2009 WL 4908581, *3 (S.D.Miss.2009) (Lee, J.)."</p>
	UNDISPUTED
37	Factors which may be considered to determine if a person is acting as a "broker" include whether the person: (1) works as an employee of the issuer; (2) receives a commission rather than a salary; (3) sells or earlier sold the securities of another issuer; (4) participates in negotiations between the issuer and an investor; (5) provides either advice or a valuation as to the merit of an investment; and (6) actively (rather than passively) finds investors. <u>S.E.C. v. Kramer</u> , 778 F. Supp. 2d 1320, 1334-35 (M.D.

	<p>Fla. 2011). (citation omitted). Whether an individual receives commissions on sales is a "hallmark" of a broker. <u>Id.</u></p> <p>"The most frequently cited factors, identified in <u>S.E.C. v. Hansen</u>, 1984 WL 2413, *10 (S.D.N.Y.1984), consist of whether a person (1) works as an employee of the issuer, (2) receives a commission rather than a salary, (3) sells or earlier sold the securities of another issuer, (4) participates in negotiations between the issuer and an investor, (5) provides either advice or a valuation as to the merit of an investment, and (6) actively (rather than passively) finds investors. <i>See also</i> <u>Cornhusker Energy Lexington, LLC v. Prospect St. Ventures</u>, 2006 WL 2620985, *6 (D.Neb.2006) (Bataillon, J.) (identifying as evidence of broker activity a person's "analyzing the financial needs of an issuer," "recommending or designing financing methods," discussing "details of securities transactions," and recommending an investment); <u>S.E.C. v. Martino</u>, 255 F.Supp.2d 268, 283 (S.D.N.Y.2003) (Pollack, J.); <u>S.E.C. v. Margolin</u>, 1992 WL 279735 (S.D.N.Y.1992) (Leisure, J.) (finding evidence of "brokerage activity" in the defendant's "receiving transaction-based compensation, advertising for clients, and possessing client funds and securities.").</p> <p>.....</p> <p><i>Cornhusker</i> describes "transaction-based compensation" as "one of the hallmarks of being a broker-dealer." 2006 WL 2620985 at *6 (stating that "[t]he underlying concern has been that transaction-based compensation represents a potential incentive for abusive sales practices that registration is intended to regulate and prevent"). In other words, transaction-based compensation is the hallmark of a salesman. By contrast, a person's recommending a particular investment or participating in a negotiation typically occurs in an array of different commercial activities and professional pursuits, including brokering."</p>
	UNDISPUTED
38	Malouf did not engage in any conduct that would classify him as a "broker" for purposes of Section 15(a)(1) and 15C(a)(1)(A).
	DISPUTED
	Malouf acted as a broker and received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.
39	Malouf was a registered investor adviser. An investment adviser is "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a

	UNDISPUTED
48	“Reckless conduct is, at the least, conduct which is highly unreasonable and which represents an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.” <u>Rolf v. Blyth, Eastman Dillon & Co.</u> , 570 F.2d 38, 47 (2d Cir. 1978); <u>Monetta Fin. Servs., Inc. v. S.E.C.</u> , 390 F.3d 952, 956 (7th Cir. 2004).
	UNDISPUTED
49	Best execution involves “execut[ing] securities transactions for clients in such a manner that the client’s total cost or proceeds in each transaction is the most favorable under the circumstances.” <u>Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934</u> , Exchange Act Release No. 23,170 (Apr. 23, 1986). Meeting this standard requires “consider[ing] the full range and quality of a broker’s services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness” <u>Id.</u> Best execution “is <i>not</i> [determined by] the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account.” <u>Id.</u> (emphasis added).
	UNDISPUTED
50	The only specific SEC requirement for ensuring compliance with best execution is “periodic and systematic review” of the procedures employed for best execution. See <u>Exchange Act Release No. 23,170 (Apr. 23, 1986)</u> .
	DISPUTED <i>See In the Matter of Anderson</i> , Release No. 48352, 2003 WL 21953883, August 15, 2003, (finding Respondent liable for charging excessive commissions).
51	The periodic and systematic review was Kopczynski’s responsibility as CCO. ACA conducted (or said it conducted) such a review every year and told UASNM that it was complying with its best execution obligations. Malouf reasonably relied on these clean reports as a validation of his bond trading activity.
	DISPUTED Mr. Malouf may not legitimately rely on professional advice in this case because he hid the truth about his arrangement with Mr. Lamonde and failure to seek best execution. PFOF 39, 40, 55, 79, 82. <u>S.E.C. v. Huff</u> , 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).

52	The Division has not identified any bond trades that it can attribute to Malouf.
	<p>DISPUTED</p> <p>Malouf directed the majority (between 60% and 95%) of the 81 bond trades identified by Dr. Gibbons. PFOF 48.</p> <p>Malouf was primarily the person at UASNM who identified which bonds should be purchased for UASNM customers. FOF 288.</p> <p>Mr. Hudson identified specific trades done by Mr. Malouf during the hearing. Malouf Trial Transcript 11/17/14 112:10-124:22 (Hudson).</p>
53	The Division has not identified any specific comparable trades against which it could be established that UASNM failed to obtain best execution.
	<p>DISPUTED</p> <p>The evidence showed that in at least some cases, shopping bond trades among brokers resulted in a broker offering a better price than Raymond James. PFOF 41.</p>
54	<p>SEC enforcement actions brought pursuant to the Securities Act, the Exchange Act, or the Advisers Act are subject to a five year statute of limitations. <i>See</i> 28 U.S.C.A. § 2462; <u>Gabelli v. S.E.C.</u>, 133 Ct. 1216, 1219-23 (2013).</p> <p>“Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.” 28 U.S.C.A. § 2462</p> <p>“This statute of limitations is not specific to the Investment Advisers Act, or even to securities law; it governs many penalty provisions throughout the U.S. Code. Its origins date back to at least 1839, and it took on its current form in 1948. See Act of Feb. 28, 1839, ch. 36, § 4, 5 Stat. 322.”</p>
	<p>DISPUTED</p> <p>By its express wording, Section 2462 applies only where the SEC seeks relief that a court deems punitive – “any civil fine, penalty, or forfeiture, pecuniary or otherwise.” Section 2462 does not limit the time for the SEC to file claims seeking equitable or remedial relief such as disgorgement, permanent injunctions, or officer and director bars. PCOL 30, 31.</p>

55	<p>The statute runs from the date of the conduct, and there is no applicable “fraud discovery rule.” <u>Gabelli v. S.E.C.</u>, 133 Ct. 1216, 1222-24 (2013).</p> <p>“In a civil penalty action, the Government is not only a different kind of plaintiff, it seeks a different kind of relief. The discovery rule helps to ensure that the injured receive recompense. But this case involves penalties, which go beyond compensation, are intended to punish, and label defendants wrongdoers. See <u>Meeker v. Lehigh Valley R. Co.</u>, 236 U.S. 412, 423, 35 S.Ct. 328, 59 L.Ed. 644 (1915) (a penalty covered by the predecessor to § 2462 is “something imposed in a punitive way for an infraction of a public law”); see also <u>Tull v. United States</u>, 481 U.S. 412, 422, 107 S.Ct. 1831, 95 L.Ed.2d 365 (1987) (penalties are “intended to punish culpable individuals,” not “to extract compensation or restore the status quo”).</p> <p>Chief Justice Marshall used particularly forceful language in emphasizing the importance of time limits on penalty actions, stating that it “would be utterly repugnant to the genius of our laws” if actions for penalties could “be brought at any distance of time.” <u>Adams v. Woods</u>, 2 Cranch 336, 342, 2 L.Ed. 297 (1805). Yet grafting the discovery rule onto § 2462 would raise similar concerns. It would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. Repose would hinge on speculation about what the Government knew, when it knew it, and when it should have known it. See <u>Rotella</u>, 528 U.S., at 554, 120 S.Ct. 1075 (disapproving a rule that would have “extended the limitations period to many decades” because such a rule was “beyond any limit that Congress could have contemplated” and “would have thwarted the basic objective of repose underlying the very notion of a limitations period”).</p> <p>Determining when the Government, as opposed to an individual, knew or reasonably should have known of a fraud presents particular challenges for the courts. Agencies often have hundreds of employees, dozens of offices, and several levels of leadership. In such a case, when does “the Government” know of a violation? Who is the relevant actor? Different agencies often have overlapping responsibilities; is the knowledge of one attributed to all?”</p> <p style="text-align: center;">* * *</p> <p>As we held long ago, the cases in which “a statute of limitation may be suspended by causes not mentioned in the statute itself ... are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it.” <u>Amy v. Watertown (No. 2)</u>, 130 U.S. 320, 324, 9 S.Ct. 537, 32 L.Ed. 953 (1889) (internal quotation marks omitted). Given the lack of textual, historical, or equitable reasons to graft a discovery rule onto the statute of limitations of § 2462, we decline to do so.”</p>
	<p>DISPUTED</p> <p>The continuing violation doctrine provides that an action is timely filed if it is filed within the required limitations period measured from the date the unlawful conduct stopped. PCOL 32.</p>

56	<p>The five-year statute of limitations contained in 28 U.S.C. § 2462 applies to all forms of relief sought by the Division. <u>SEC v. Graham</u>, 21 F. Supp.3d 1300, 1308-10 (S.D. Fla. 2014).</p> <p>"As discussed above, the Supreme Court, in a unanimous opinion issued last term, had occasion to interpret the scope of the phrase "when the claim first accrued" contained in § 2462, and decided that the most natural meaning of the phrase is that a claim accrues when the act giving rise to the claim actually occurs. <u>Gabelli</u>, 133 S.Ct. at 1220–21 (further holding that the SEC, when acting in its enforcement capacity, cannot take advantage of the fraud discovery rule to delay the date of accrual). While the Supreme Court there expressly declined to reach the question whether injunctive relief and disgorgement are also covered by § 2462, as the question was not properly before it, <i>id.</i> at 1220 n. 1, this Court believes that the long-held policies and practices that underpin the Supreme Court's unanimous opinion in <u>Gabelli</u>, as well as the text of the statute itself, require the conclusion that § 2462 does reach all forms of relief sought by the SEC in this case.</p> <p>In declining to allow the SEC to take advantage of the fraud discovery rule in bringing an enforcement action (as opposed to an action where the Government itself is a victim of a fraud), the Supreme Court expressed great concern for "leav[ing] defendants exposed to government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future." <i>Id.</i> at 1223. The Court reaffirmed that it would reject a rule that would " 'extend[] the limitations period to many decades' because such a rule was 'beyond any limit that Congress could have contemplated' and 'would have thwarted the basic objective of repose underlying the very notion of a limitations period.' " <i>Id.</i> (quoting <u>Rotella v. Wood</u>, 528 U.S. 549, 554, 120 S.Ct. 1075, 145 L.Ed.2d 1047 (2000)). The Court invoked Chief Justice Marshall's "particularly forceful language ... emphasizing the importance of time limits on penalty actions" that "it would be utterly repugnant to the genius of our laws if actions for penalties could be brought at any distance of time." <u>Gabelli</u>, 133 S.Ct. at 1223 (quoting <u>Adams v. Woods</u>, 2 Cranch 336, 342, 2 L.Ed. 297 (1805) (Marshall, C.J.)).</p> <p>The Court reaffirmed that statutes of limitation, which "provide security and stability to human affairs," are indeed "vital to the welfare of society." <i>Id.</i> at 1221 (internal citations and quotation marks omitted). And the Court underscored the importance of "the basic policies of all § 2462 limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." <i>Id.</i> Ultimately, the Court unanimously reaffirmed the principle that "even wrongdoers are entitled to assume that their sins may be forgotten." <i>Id.</i> (quoting <u>Wilson v. Garcia</u>, 471 U.S. 261, 271, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985)).</p> <p>The SEC's position with regard to § 2462—that it does not apply where, as here, the SEC seeks disgorgement, injunction, and declaratory relief—would make the Government's reach to enforce such claims akin to its unlimited ability to prosecute murderers and rapists. For support of this position, the SEC points to <u>United States v.</u></p>
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Banks, 115 F.3d 916, 919 (11th Cir.1997), wherein the Eleventh Circuit held that “absent a clear expression of Congress to the contrary—a statute of limitation does not apply to claims brought by the federal government in its sovereign capacity.” The Court in *Banks*, pointing to two district court decisions from outside the Eleventh Circuit, concluded that the “plain language of § 2462 does not apply to equitable remedies,”⁶ and that therefore the “clear expression of Congress” required before application of the statute of limitations was not present in § 2462. *Id.* The Eleventh Circuit in *Banks*, however, as well as the only published district court decision it relied on regarding § 2462's coverage of equitable remedies, dealt with a different kind of equitable remedy seeking to enjoin a different kind of harm than at issue in this case. In both *Banks* and *Hobbs*, the United States in its sovereign capacity sought to enforce the Clean Water Act, and in each case sought to enjoin the discharge of fill into U.S. waters. *See id.* at 918; *Hobbs*, 736 F.Supp. at 1407. The harm complained of was continuing in nature in both cases, and enjoining the continuing harm was the purpose of the enforcement action; it was not to punish defendants for discharging the fill. Because the injunction sought was not in nature a “penalty,” which is expressly covered by § 2462, there was no “clear expression of Congress” that § 2462 should apply to bar the government's enforcement action in that case.

In essence, the SEC's argument in this case is that because the words “declaratory relief,” “injunction,” and “disgorgement” do not appear in § 2462, no statute of limitations applies. The principles underlying the Supreme Court's decision in *Gabelli*, however, counsel against accepting the SEC's argument. Penalties, “pecuniary or otherwise,” are at the heart of all forms of relief sought by the SEC in this case. First of all, by its very terms, the SEC's complaint seeks to have the Court, by way of a declaration that the defendants have violated the federal securities laws, “label defendants wrongdoers.” *See Gabelli*, 133 S.Ct. at 1223 (discussing what constitutes a penalty and then invoking the powerful words of Chief Justice Marshall that “it would be utterly repugnant to the genius of our laws if actions for penalties could be brought at any distance of time”). Similarly, the injunctive relief sought by the SEC in this case forever barring defendants from future violations of the federal securities laws can be regarded as nothing short of a penalty “intended to punish,” especially where, as here, no evidence (or allegations) of any continuing harm or wrongdoing has been presented. Finally, the disgorgement of all ill-gotten gains realized from the alleged *1311 violations of the securities laws—*i.e.*, requiring defendants to relinquish money and property—can truly be regarded as nothing other than a forfeiture (both pecuniary and otherwise), which remedy is expressly covered by § 2462. To hold otherwise would be to open the door to Government plaintiffs' ingenuity in creating new terms for the precise forms of relief expressly covered by the statute in order to avoid its application.”

DISPUTED

The continuing violation doctrine provides that an action is timely filed if it is filed within the required limitations period measured from the date the unlawful conduct stopped. PCOL 32.

57	This proceeding was instituted June 9, 2014, and therefore all claims, fines, penalties, or forfeitures are limited to conduct that occurred after June 9, 2009.
	<p>DISPUTED</p> <p>By its express wording, Section 2462 applies only where the SEC seeks relief that a court deems punitive – “any civil fine, penalty, or forfeiture, pecuniary or otherwise.” Section 2462 does not limit the time for the SEC to file claims seeking equitable or remedial relief such as disgorgement, permanent injunctions, or officer and director bars. PCOL 30, 31. The continuing violation doctrine provides that an action is timely filed if it is filed within the required limitations period measured from the date the unlawful conduct stopped. PCOL 32.</p>
58	<p>As CCO Kopczynski was responsible for ensuring that a multi-bid process was occurring for bond trades.</p> <p>Q Now, are you aware that there has been expert testimony in this case that requires, or that purports to require, a multiple bid process with every bond trade? A Am I aware that? Q That that opinion has been expressed in this case. A Yes. Q And you're aware that that's how the advice came about that ACA has given to UASNM; correct? A That is correct. Q Was that the process and procedure back in 2008? A It was my understanding it was; correct. Q All right. As chief compliance officer, were you the person responsible for ensuring that that process and procedure was followed? A I would have been.</p> <p>Malouf Trial Transcript 11/21/14 at 1291:16-1292:8</p>
	<p>DISPUTED</p> <p>Mr. Malouf was responsible for ensuring his own bond trading satisfied best execution requirements; when Mr. Malouf was CEO of UASNM he was “top dog” and Mr. Kopczynski and Mr. Hudson worked for him. FOF #197.</p>
59	<p>Kopczynski was responsible for supervising Malouf's bond trading.</p> <p>Q Who supervised Mr. Malouf's bond trading? A I was -- I was the responsible party.</p> <p>Malouf Trial Transcript 11/21/14 at 1311:9-10</p>

	<p>DISPUTED</p> <p>Mr. Malouf was responsible for ensuring his own bond trading satisfied best execution requirements; when Mr. Malouf was CEO of UASNM he was "top dog" and Mr. Kopczynski and Mr. Hudson worked for him. FOF #197.</p>
60	<p>Kopczynski may have violated his fiduciary duty by failing to disclose payments on Form ADV.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention.</p>
61	<p>An investment adviser does not have to obtain multiple bids on every transaction.</p> <p>Q Mr. Malouf is doing one bond trade in 2009 -- okay? Outside the bid-ask spread, how many bids should he be getting?</p> <p>A Well, normally, a bond trader would know what broker-dealers do good jobs on different types of bonds. So, some broker-dealers do better jobs on municipals, some do better jobs on corporates, some are just plain price competitive and they do great jobs on agencies and Treasuries. So, it's a case-specific question about how many bids and asks you need, because it's the type of bond and it's the type of broker-dealer that's going to be attracted to trading with you on that bond, because broker-dealers specialize, to some extent -- I mean, they specialize with respect to their practice and their trading preferences.</p> <p>Q So, it sounds to me like the answer is, it varies by circumstance?</p> <p>A Yes, it does. And it varies by type of bond and broker-dealers that are trading it.</p> <p>Malouf Trial Transcript 11/18/14 at 551:24-552:18</p>
	<p>DISPUTED</p> <p>To seek best execution an investment advisor generally must obtain competing bid or ask prices from more than one broker-dealer. PFOF 35.</p>
62	<p>It is a CCO's duty to review trade tickets to confirm best execution is being achieved.</p>
	<p>DISPUTED</p>

	No evidence or authority is provided for this contention.
63	Hudson, Kopczyński, and Ciambor had all the information they needed to ensure UASNМ's Forms ADV and marketing materials adequately and accurately disclosed UASNМ's trading through RJFS while Malouf received payments.
	DISPUTED Mr. Malouf failed to disclose his agreement with Lamonde. PFOF 6, 79, 82.
64	A contract is not voided when the parties do not explicitly follow its terms, the parties may modify the contract through express or implied agreement, which may be shown by conduct. <u>Medina v. Sunstate Realty, Inc.</u> , 889 P.2d 171, 173 (N.M. 1995) (parties to a written contract may modify that contract by express or implied agreement as shown by the words and conduct); <u>Lalow v. Codomo</u> , 101 So.2d 390, 393 (Fla.1958) (noting that "the actions of the parties may be considered as a means of determining the interpretation that they themselves have placed upon the contract").
	UNDISPUTED
65	Contracts may be modified by non-conforming conduct by one party if the other party accepts the non-conforming performance. <u>Medina v. Sunstate Realty, Inc.</u> , 889 P.2d 171, 173 (N.M. 1995) (parties to a written contract may modify that contract by express or implied agreement as shown by the words and conduct)
	UNDISPUTED
66	NASD IM 2420-2 requires only that an agreement be "bona fide," not that it be written. Q And I believe you expressed an opinion about the nature of the bona fide contract that's referred to in 2420-2. A Right. Just that's all it says -- "bona fide contract." It doesn't say "oral," it doesn't say "written." So, bona fide is bona fide. As a lawyer, I certainly learned back in law school that oral contracts can be binding as long as there's a bona fide agreement in place prior to the termination that says the individual who had previously been registered who was no longer registered -- or, in the case of death, it would be the family members, usually the surviving spouse -- they can continue to receive commissions after the date of registration. Because, ordinarily, a broker-dealer is not permitted to share commissions with unregistered people. That's a violation of FINRA rules. So, there has to be an exception to that rule if somebody who is no longer registered is going to somehow continue to receive commissions. So, FINRA -- way

	<p>before FINRA -- NASD concluded that it's okay. It's okay for this nonregistered person to receive commissions, provided that you have a bona fide contract in place.</p> <p>Malouf Trial Transcript 11/21/14 at 1421:20-1422:17</p>
	<p>DISPUTED</p> <p>IM 2420-2 does not use the word "written," but the clear implication from the rule, from interpretative guidance provided through things like SEC No-Action letters, from RJFS rules, and even from Malouf's own testimony is that any agreement under that rule must be written. PCOL 4; FOF 222; Malouf Trial Tr. 11/20/2014 at 1048:17-1049:1.</p>
67	<p>Upon initial receipt of commissions by Branch 4GE, the funds stop being commissions and LaMonde was free to pay for any manner of business expenses with them, whether goods, services, or repayment for financing.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Malouf acted as a broker and received transaction-based compensation from LaMonde for the bond transactions at issue in this case. PFOF 16, 17.</p>
68	<p>It cannot reasonably be concluded from the quarterly payment amounts to Malouf that LaMonde had agreed to pay Malouf 100% of the commissions.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. And the undisclosed agreement was for Mr. Lamonde to pay close to 100% of commissions to Mr. Malouf. PFOF 6.</p>
69	<p>The evidence supports a finding that LaMonde and Malouf agreed to a purchase price of approximately \$1.1 million, that the purchase price was paid off early – in three years instead of four, and that extrapolating payments versus commissions over a fourth year approximates the 40% of branch revenue in the PPA.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. And the undisclosed agreement was for Mr. Lamonde to pay close to 100% of</p>

	commissions to Mr. Malouf. PFOF 6.
70	The payments from LaMonde to Malouf were merely a form of financing tied to Malouf's ability to pay, and they did not meet the definition of transaction-based compensation.
	DISPUTED No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Malouf acted as a broker and received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.
71	Payment for participation in a trade is the essence of a commission
	DISPUTED No evidence or authority is provided for this contention.
72	The wide variances between the commissions generated at Branch 4GE and the payments made to Malouf do not support a <i>quid pro quo</i> arrangement, and no inference can be drawn that the payments are tied to the commissions.
	DISPUTED The cited evidence indicates that Lamonde's payments to Malouf totaled \$1,068,084.13, which equaled 99.4% of Lamonde's commissions.
73	Commissions are not a hallmark of broker activity in this case because they are not tied to broker activity by Malouf.
	DISPUTED No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Malouf acted as a broker and received transaction-based compensation from Lamonde for the bond transactions at issue in this case. PFOF 16, 17.
74	If commissions were paid to Malouf, they were permissible under NASD 2420 and were not paid to him as a broker.

	<p>DISPUTED</p> <p>From 2008 through May 2011, Malouf's arrangement with Lamonde did not comply with IM-2420-2 because while still receiving commissions after leaving Raymond James and not registered as a broker dealer, Malouf was affiliated with an investment adviser (UASNM) and was engaged in the securities business. PFOF 22.</p>
75	<p>As of January 2008 ownership of Branch 4GE had changed from Malouf to LaMonde, accounts had been transferred from Malouf to LaMonde pursuant to a list, and LaMonde started making payments to Malouf for the branch. These events in and of themselves are conclusive evidence that a bona fide agreement for the sale of Branch 4GE existed as of January 2008.</p>
	<p>DISPUTED</p> <p>Lamonde admitted that he and Malouf had no written agreement until June 2010. PFOF 20. At whatever time it was reached, the real agreement was to pay close to 100% of commissions to Mr. Malouf. PFOF 6.</p>
76	<p>Malouf's work as an investment adviser for UASNM complied with the language of NASD 2420.</p>
	<p>DISPUTED</p> <p>From 2008 through May 2011, Malouf's arrangement with Lamonde did not comply with IM-2420-2 because while still receiving commissions after leaving Raymond James and not registered as a broker dealer, Malouf was affiliated with an investment adviser (UASNM) and was engaged in the securities business. PFOF 22.</p>
77	<p>The no-action letters cited and relied upon by the Division are not controlling or decisive, and they do not constitute binding rules, regulations, or interpretations of any rule or regulation.</p> <p><u>Amalgamated Clothing and Textile Workers Union v. SEC</u>, 15 F.3d 254, 257 (2d Cir. 1994)</p> <p>"Although courts may find SEC positions on enforcement as articulated in no-action letters persuasive in the circumstances, such positions are not binding on the district courts."</p> <p><u>Gryl v. Shire Pharmaceuticals Group PLC</u>, 298 F.3d 136, 145 (2d Cir. 2002)</p> <p>"SEC no-action letters constitute neither agency rule-making nor adjudication and thus are entitled to no deference beyond whatever persuasive value they might have, see <u>Morales v. Quintel Entm't, Inc.</u>, 249 F.3d 115, 129 (2d Cir.2001); <u>N.Y. City Employees' Ret. Sys. v. SEC</u>, 45 F.3d 7, 13 (2d Cir.1995); <u>Amalgamated Clothing &</u></p>

	<p><u>Textile Workers Union v. SEC</u>, 15 F.3d 254, 257 (2d Cir.1994). Indeed, "[e]ven when district courts have ruled in accord with no-action letters, they almost always have analyzed the issues independently of the letters." <u>N.Y. City Employees' Ret. Sys.</u>, 45 F.3d at 13."</p>
	<p>DISPUTED</p> <p>The cited authority indicates that SEC no-action letters are persuasive authority, and Mr. Malouf's own expert Mr. Wolper testified that they provide guidance and are relied upon in the securities industry:</p> <p>Q Would you agree that SEC no-action letters provide guidance to the interpretation of FINRA rules? A Yes. Q And would you agree that they are relied on in the industry? A Sure.</p> <p>Malouf Trial Transcript 11/21/14 at 1498:7-12 (Wolper).</p>
78	<p>Malouf could receive payments pursuant to NASD 2420 because he was eligible for FINRA membership and was not a disqualified person</p>
	<p>DISPUTED</p> <p>From 2008 through May 2011, Malouf's arrangement with Lamonde did not comply with IM-2420-2 because while still receiving commissions after leaving Raymond James and not registered as a broker dealer, Malouf was affiliated with an investment adviser (UASNM) and was engaged in the securities business. PFOF 22.</p>
79	<p>A president/CEO of an investment adviser may delegate ultimate responsibility for the functions of a firm to other qualified individuals, whereupon the delegate assumes ultimate responsibility, not the CEO. Wolper Rebuttal Report, No. 7 <i>Richard F. Kresge</i>, Exchange Act Rel. No. 55988 (June 29, 2007), 90 SEC Docket 3072, 3084 (citing <i>Rita H Malm</i>, 52 S.E.C. 64, 69 (1994)) "We have frequently emphasized that the president of a brokerage firm is responsible for the firm's compliance with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his or her duties."</p>
	<p>DISPUTED</p> <p><i>Kresge</i> is a broker-dealer case with limited if any applicability here, and in any case requires reasonable follow-up and review of delegation, which there is no evidence that Mr. Malouf did, as shown in the testimony of Mr. Malouf's expert, Mr. Wolper:</p>

	<p>Q Now, the <i>Kresge</i> case is a broker-dealer case, not an investment adviser case; correct?</p> <p>A Correct.</p> <p>...</p> <p>Q But I'd like to ask you about a couple of statements in that case. Do you agree that assuring proper supervision is a critical component of broker-dealer operations?</p> <p>A Yes.</p> <p>Q Do you agree that it is not sufficient for the person with overarching supervisory responsibilities to delegate supervisory responsibility to a subordinate, even a capable one, and then simply wash his hands of the matter until a problem is brought to his attention? Implicit in the -- excuse me. Implicit is the additional duty to follow up and review that delegated authority to ensure that it is being properly exercised. Do you agree with that?</p> <p>A I do. As I said earlier, you need to add that caveat, which I didn't bother to put into my report, but the president is responsible for the supervision unless he delegates that responsibility to another qualified individual and then neither knows nor has reason to know that the delegate is not doing their job. So, implicit in that last phrase is the "need not" -- or, the obligation not simply to bury one's head in the sand, and then take steps to ensure that one's delegate is in fact performing the responsibilities which he or she has been delegated.</p> <p>Q In this case, what did Mr. Malouf do to follow up and review the delegated authority?</p> <p>A What did Mr. Malouf do as CEO to ensure that Mr. Kopczynski, as the compliance officer, was doing what Mr. Kopczynski had been delegated? I don't know.</p> <p>Malouf Trial Transcript 11/21/14 at 1488:8-1489:23 (Wolper).</p>
80	Hudson had a duty to ensure the accuracy and completeness of UASNM's Forms ADV because he attested to their accuracy and completeness when he signed them or allowed others to sign them on his behalf.
	UNDISPUTED , but Mr. Malouf, as CEO, president, and majority shareholder of UASNM, assisted in the preparation of UASNM Forms ADV, had control over the Forms ADV, and had final and ultimate responsibility for UASNM's Forms ADV between 2006 and the end of 2010. PFOF 98, 99, 102, 103.
81	ACA had a responsibility as UASNM's compliance consultant to properly advise UASNM regarding disclosures in its marketing materials and regulatory filings.
	UNDISPUTED , but Mr. Malouf, as CEO, president, and majority shareholder of UASNM, assisted in the preparation of UASNM Forms ADV, had control over the Forms ADV, and had final and ultimate responsibility for UASNM's Forms ADV between 2006 and the end of 2010. PFOF 98, 99, 102, 103. Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV. PFOF 104.

82	ACA specifically agreed to undertake responsibility to properly advise UASNM regarding disclosures in its marketing materials and regulatory filings in exchange for substantial compensation, and Malouf reasonably believed ACA was doing its job.
	<p>DISPUTED</p> <p>Mr. Malouf, as CEO, president, and majority shareholder of UASNM, assisted in the preparation of UASNM Forms ADV, had control over the Forms ADV, and had final and ultimate responsibility for UASNM's Forms ADV between 2006 and the end of 2010. PFOF 98, 99, 102, 103. Malouf was at least extremely reckless in not disclosing his arrangement with Lamonde such that it could be disclosed in UASNM's Forms ADV. PFOF 104.</p>
83	"Best execution" is not defined in federal securities laws or regulations.
	UNDISPUTED
84	<p>There is no regulatory requirement for an investment adviser to obtain multiple bids on bond transactions.</p> <p>Q Let's turn to tab 20, please. Was it – was it your understanding in 2008 to 2011 that that was a regulatory requirement, that a broker-dealer obtain multiple bids on bond transactions? A A broker-dealer or -- Q I'm sorry. I said that wrong. A -- or advisers? Q Thank you. An investment adviser. A It's not a specific requirement, no. Q And as a compliance expert, are you aware of any SEC-published guidance indicating that that would be a requirement? A No.</p> <p>Malouf Trial Transcript 11/19/14 at 802:24-803:12</p>
	<p>DISPUTED</p> <p>To seek best execution an investment advisor generally must obtain competing bid or ask prices from more than one broker-dealer. PFOF 35.</p>
85	A lack of documentation of a multi-bid process in every instance is not proof that such a process did not occur, or that best execution was not achieved
	UNDISPUTED
86	A trade-by-trade, real time comparison and analysis is not necessary to achieve best execution.

	<p>Wolper Report No. 11</p> <p>Wolper Rebuttal Report No. 5</p> <p>*****</p> <p>A Well, it's -- it's, you know to the -- in a world without much guidance, that's one of the seminal statements on how one achieves best execution. And what the release talks about is a systematic and periodic review of best execution. It does not talk about the need to do a best execution analysis on a real-time, trade-by-trade basis.</p> <p>The only way you can do a systematic, periodic review of best execution is on a periodic look-back basis, retrospective basis, to see how you did. And, well, so, that's what -- that's the most important point about that release. I will say, though, that's not Mr. Malouf's obligation.</p> <p>Malouf Trial Transcript 11/21/14 at 1409:1-13</p>
	<p>DISPUTED</p> <p>As Dr. Gibbons stated in his rebuttal report:</p> <p>I agree with Mr. Wolper that investment advisors do evaluate their trading processes on a post hoc basis. However, the tangible results of their trading are garnered on a "real time" basis. Just because the investment advisor evaluates his trading procedures in retrospect does not mean that improvements should not be applied to the present and continuous process of placing trades. Over time investment advisors expect to constantly improve the net prices they get for their clients because of the constant improvement they make as a result of their review process. The market place is always changing with new firms and old firms competing more and more for advisor business. (see section 3A - 3E in my report)</p> <p>The statement that Mr. Wolper makes in paragraph 13 that neither, "Mr. Malouf nor UASRM had an obligation on a real-time, trade-by-trade basis to ensure that the executions he was getting from RIPS constituted "best execution" ignores several key points:</p> <ol style="list-style-type: none"> 1. Mr. Malouf has a fiduciary duty to his clients which includes the duty of diligence, prudence, the duty to be knowledgeable and to act in the client's best interest. Without a doubt this means when trades are being done not at some later time. Points 2 and 3 below follow from this duty. 2. The duty to get alternative bids and asks on a contemporary basis (this duty is described in UASRM's brochure), 3. The duty Mr. Malouf has to trade at the lowest commissions or mark-ups or mark-downs when available within the constraints of the market and the broker-dealer. (See Sections 1, 2 and 3 of my report.) <p>Ex. 244 at 3.</p>
87	<p>The failings of Ciambor, Hudson, and Kopczynski are attributable to their own culpable negligence, not concealment by Malouf.</p>
	<p>DISPUTED</p> <p>No evidence or authority is provided for this contention, and the contention is incorrect, as established at the hearing and in the Division's post-hearing briefing. Mr. Malouf hid the truth about his arrangement with Mr. Lamonde. PFOF 79, 82.</p>

88	Malouf's delegation of responsibility to others and his reliance upon them was reasonable, and negates any finding of scienter or negligence.
	DISPUTED Mr. Malouf may not legitimately rely on professional advice in this case because he hid the truth about his arrangement with Mr. Lamonde and failure to seek best execution. PFOF 39, 40, 55, 79, 82. <u>S.E.C. v. Huff</u> , 758 F.Supp.2d 1288, 1351-1352 (S.D. Fla. 2010).
89	Any alleged harm to investors has been rectified by the payment of compensation for purportedly excessive commissions.
	DISPUTED No evidence or authority is provided for this contention.

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