UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4274/ November 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16223

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

I.

On October 29, 2014, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Sands Brothers Asset Management, LLC ("SBAM"), Steven Sands ("S. Sands"), Martin Sands ("M. Sands") and Christopher Kelly ("Kelly" or "Respondent").

On August 31, 2015, the Hearing Officer issued an Order on Motions for Summary Disposition pursuant to Rule of Practice 250(b), 17 C.F.R. § 201.250(b) (the "Order on Summary Disposition"), partially granting the motion of the Division of Enforcement ("Division") for summary disposition against Respondent. The Order on Summary Disposition denied the Division's motion for summary disposition as to sanctions and ordered additional proceedings to determine what civil penalties and remedial sanctions pursuant to Sections 203(f), 203(i) and 203(k) of the Advisers Act against Respondent are in the public interest.

II.

In anticipation of those proceedings, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the

Commission's jurisdiction over him, the subject matter of these proceedings, and the findings contained in Sections III.9 and 10, below, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Penalties, Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that

Summary

1. For the fiscal years 2010, 2011 and 2012, SBAM failed to timely distribute audited financial statements to the investors of the pooled investment vehicles managed by SBAM in violation of the "custody rule" – Rule 206(4)-2 under Section 206(4) of the Advisers Act – and without regard to an Order issued by the Commission in October 2010 requiring SBAM, S. Sands and M. Sands to cease and desist from violating or causing any future violations of that rule.

2. Kelly, the Chief Compliance/Chief Operating Officer of SBAM, aided, abetted and caused SBAM's custody rule violations, and was not in compliance with the Commission's 2010 Cease-And-Desist Order when he failed to implement any procedures or safeguards to ensure compliance. Kelly made no adequate efforts to ensure that SBAM met its custody rule obligations, either by disseminating the audited financial statements that investors in certain of SBAM's-managed funds were entitled to receive, or alternatively by submitting to a surprise examination to verify client assets.

Respondent and SBAM

3. SBAM is a New York limited liability company formed in June 1998, and has been registered with the Commission as an investment adviser since July of that year. SBAM maintains offices in New York, Connecticut and California, and provides investment advisory services to various pooled investment vehicles. As of July 2014, SBAM had approximately $64 million under management. SBAM is owned by the Julios and Targhee Trusts, which are set up for the benefit of the families of M. Sands and S. Sands, SBAM's principals.

4. Kelly, age 57, resides in Greenwich, Connecticut. From 2008 through at least May 2014, Kelly was the Chief Compliance Officer, Chief Operating Officer and a partner at SBAM. According to the reports prepared by an independent compliance consultant retained by SBAM as a result of disciplinary proceedings instituted by the Connecticut Department of

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Banking, Kelly was responsible for all of SBAM's operations other than those that involved investment decision-making. Kelly is a lawyer and is presently licensed to practice in New York and the District of Columbia. Kelly previously held a Series 7 license.

The Custody Rule

5. Rule 206(4)-2, promulgated under Section 206(4) of the Advisers Act (the "custody rule"), is designed to protect investor assets. The custody rule requires that advisers who have custody of client assets put in place a set of procedural safeguards to prevent loss, misuse or misappropriation of those assets.

6. An adviser has "custody" of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. 17 C.F.R. § 275.206(4)-2(d)(2).

7. An adviser who has custody must, among other things: (i) ensure that a qualified custodian maintains the client assets; (ii) have a reasonable basis for believing that the qualified custodian sends quarterly account statements to clients; and (iii) ensure that client funds and securities are verified by actual examination each year by an independent public accountant. *Id.* § 275.206(4)-2(a)(1), (3), (4).

8. The custody rule provides an alternative for advisers to pooled investment vehicles. In relevant part, the rule prescribes that an adviser "shall be deemed to have complied with" the independent verification requirement if the adviser "distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year." *Id.* § 275.206(4)-2(b)(4)(i). The accountant performing the audit must be an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. *Id.* § 275.206(4)-2(b)(4)(ii). An adviser that takes this approach is also not required to satisfy the account statements delivery requirement described above. *Id.* § 275.206(4)-2(b)(4).

The Order on Summary Disposition

9. In the Order on Summary Disposition, the Hearing Officer determined that SBAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder by failing to distribute to investors the fiscal year 2010, 2011 and 2012 audited financial statements of ten funds as to which SBAM acted as Investment Adviser within the period provided for in Rule 206(4)-2.

10. The Hearing Officer further determined that Respondent caused and willfully aided and abetted SBAM's violations as to the late distribution of the ten funds' fiscal year 2011 and 2012 audited financial statements.

SBAM's History of Non-Compliance with the Custody Rule

11. SBAM provides investment advisory services to a number of pooled investment vehicles. At all times relevant hereto, SBAM served as investment adviser to the following pooled investment vehicles: Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, Katie & Adam Bridge Partners LP, Granite Associates, LLC, 280 Ventures LLC, Genesis Merchant Partners LP, Genesis Merchant Partners II LP, Vantage Point Partners LP, Select Access LLC, Select Access (Institutional) LLC, Select Access III LLC, and SB Opportunity Technology Associates Institution LLC.

12. In 1999, the staff of the Commission's Office of Compliance Inspection and Examinations ("OCIE") performed an examination of SBAM. As a result of that examination, a deficiency letter was issued that concluded, among other things, that SBAM wrongly stated in its Form ADV that it does not have custody of client assets. To the contrary, by virtue of the relationship of the Adviser to its pooled investment vehicles, and the relationship between S. Sands and M. Sands and the managing members / general partners of those vehicles, SBAM did in fact appear to have custody of client assets.[2]

13. The deficiency letter, addressed to M. Sands, went on to spell out some of the requirements that SBAM had to meet as a custodian of investor assets.

14. In 2010, as a result of subsequent OCIE examinations in 2004 and 2009 and an investigation by the Division of Enforcement, SBAM, M. Sands and S. Sands consented, without admitting or denying the findings therein, to the entry of an Order Instituting Settled Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act (the "2010 Order").

15. Among other findings, the Commission's 2010 Order found that SBAM willfully violated the custody rule by improperly relying on the pooled investment vehicle alternative, which allowed for the distribution of audited financial statements in lieu of submitting to a surprise examination by an independent public accountant to verify custody of assets, among

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[2] All but one of the funds at issue in the 1999 deficiency letter were different from the funds that SBAM advises today. Nonetheless, the arrangements cited in 1999 leading the staff to conclude that SBAM had custody over client assets exist with respect to SBAM's current funds. As to the one fund that SBAM still advises that was addressed in the 1999 deficiency letter – Katie and Adam Bridge Partners, L.P. – the exam staff concluded that SBAM appeared to have custody of investor assets because a provision in the Limited Partnership Agreement provided that the General Partner, controlled by S. Sands and M. Sands, had authority to "open, maintain, and close bank accounts and draw checks or other orders for the payment of monies…." That arrangement remained the same.

other requirements. In particular, SBAM: (i) failed to submit to an adequate audit performed in accordance with generally accepted standards; and (ii) did not timely distribute audited financial statements. The Commission's 2010 Order further found that SBAM continued to state in its Forms ADV that it did not have custody over client funds when, in fact, it did.[3] (2010 Order ¶¶ 7-11.)

16. The Commission's 2010 Order concluded that, as the lead principals primarily responsible for the relevant SBAM actions, S. Sands and M. Sands willfully aided, abetted and caused SBAM's violations of the custody rule. (*Id.* ¶¶ 4, 13(e).)

17. In light of these and other violations of the Advisers Act, the Commission's 2010 Order ordered that: (i) SBAM, S. Sands and M. Sands cease and desist from committing or causing violations or future violations of, among other things, the custody rule; (ii) SBAM, S. Sands and M. Sands be censured; and (iii) SBAM pay a civil money penalty of $60,000. (*Id.* § IV(A)-(C).)

SBAM Continued to Violate the Custody Rule After the 2010 Order

18. The 2010 Order notwithstanding, SBAM failed to comply with the custody rule in the years that followed. SBAM neither submitted to a surprise examination, nor distributed its audited financials in the 120-day window imposed by the rule. Indeed, SBAM took no remedial action in response to the 2010 Order to implement policies or procedures aimed at ensuring compliance with the custody rule.

19. For the period 2010 through 2012, SBAM had custody of client assets within the meaning of Rule 206(4)-2(d)(2). At no time from 2010 through the present has SBAM submitted to a surprise examination by an independent public accountant.

20. SBAM distributed its funds' audited financial statements for the fiscal years 2010 – 2012 after the 120-day custody rule deadline.

a. Audited financial statements for the fiscal year 2010 were distributed at least 40 days late for the following funds: Sands Brothers Venture Capital LLC, Sands Brothers Venture Capital II LLC, Sands Brothers Venture Capital III LLC, Sands Brothers Venture Capital IV LLC, Katie & Adam Bridge Partners LP, Granite Associates, LLC, 280 Ventures LLC, Genesis Merchant Partners LP, Genesis Merchant Partners II LP and Vantage Point Partners LP (collectively, the "Ten Funds");

[3] In addition to the custody rule deficiencies, the 2010 Order found violations of Advisers Act Section 204 and Rule 204-2 for failing to make, keep and furnish copies of certain books and records to the Commission, and Sections 204 and 207 and Rule 204-1 for making inaccurate statements in, and failing to properly file, its Form ADV.

b. Audited financial statements for the fiscal year 2011 were distributed at least 191 days (over 6 months) late and up to 242 days (nearly 8 months) late for the Ten Funds; and

c. Audited financial statements for the fiscal year 2012 were distributed at least 84 days and up to 93 days (approximately 3 months) late for the Ten Funds.

21. The circumstances that led the audits to be delayed were predictable and not unforeseeable. As SBAM's auditors noted with respect to the audit for the fiscal year 2012, "[t]here was a delay in the timely receipt from [SBAM] management of the information supporting the valuation of non-performing loans . . . which significantly affected the completion of the audit and the timely issuance of the financial statements." The conditions underlying that delay "were known or identifiable before the commencement of the audits," and therefore "a more proactive timely approach by your valuation staff in identifying these situations and obtaining the necessary documentation . . . could alleviate most of the audit issues." Indeed, the auditors had repeated difficulty obtaining the information they needed to value the same portfolio companies year over year. This was so even though for some of those companies, S. Sands and/or M. Sands served on the company's board, and for one such portfolio company, Kelly acted as President and Chief Executive Officer.

22. Kelly knew or was reckless in not knowing about, and substantially assisted, SBAM's violations of the custody rule. Kelly executed the notarized offer of settlement to enter into the 2010 Order on behalf of SBAM. Further, SBAM's compliance manual tasked Kelly with "ensur[ing] compliance with the restrictions and requirements of Rule 206(4)-2 adopted under the Advisers Act." Kelly engaged the auditors for full audits (but not surprise examinations); he also signed representation letters to, and was a principal contact for, the auditors. He knew that the audited financial statements were not being distributed on time. Despite his responsibility to do so, Kelly, who was responsible for compliance and for all of SBAM's non-investment operations, implemented no policies or procedures to ensure compliance with the custody rule – even after the 2010 Order and after SBAM continued to miss its custody rule deadline year after year. At most, he simply reminded people of the custody rule deadline without taking any more substantial action. Kelly did not make any attempt to notify the staff of the Commission of any difficulties the Adviser was encountering in meeting the custody rule deadlines.

Violations

23. As a result of the conduct described above, SBAM willfully violated Section 206(4) of the Advisers Act, which prohibits a registered investment adviser from engaging in fraudulent, deceptive or manipulative conduct, and Rule 206(4)-2 thereunder, which requires an adviser to take certain enumerated steps to safeguard client assets over which it has custody.

24. As a result of the conduct described above, Kelly willfully aided and abetted and caused SBAM's violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Kelly's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 206(4) and Rule 206(4)-2 promulgated thereunder.

B. Pursuant to Section 203(f) of the Advisers Act, Respondent be, and hereby is, suspended from serving or acting as a Chief Compliance Officer of any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for twelve (12) months following the entry of this Order.

C. Pursuant to Section 203(i) of the Advisers Act, Respondent shall, within 10 days of the entry of the Order, pay a civil money penalty in the amount of $60,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Christopher Kelly as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, Securities and Exchange

Commission, New York Regional Office, Brookfield Place, 200 Vesey Street, New York, NY 10281.

V.

It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary