

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2554 / September 26, 2006

INVESTMENT COMPANY ACT OF 1940
Release No. 27500 / September 26, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12432

In the Matter of

BISYS Fund Services, Inc.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTION 203(k)
OF THE INVESTMENT ADVISERS ACT
OF 1940, AND SECTIONS 9(b) AND 9(f) OF
THE INVESTMENT COMPANY ACT OF
1940 AS TO BISYS FUND SERVICES, INC.**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against BISYS Fund Services, Inc. (“BISYS” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 203(k) of the Investment Advisers Act

of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that

Summary

These proceedings arise out of improper arrangements between BISYS Fund Services, Inc. (“BISYS” or “Respondent”), a mutual fund administrator, and 27 mutual fund advisers in which BISYS aided and abetted the advisers’ improper use of fund assets for marketing and other expenses incurred by the advisers. BISYS entered into side agreements obligating BISYS to rebate a portion of its administration fee to the funds’ advisers so that the fund advisers would continue to recommend BISYS as an administrator to the fund board of trustees. Through these side agreements, fund advisers used fund assets to pay for marketing expenses incurred by the advisers to promote the funds. Occasionally, fund advisers also used the money dedicated by BISYS pursuant to these arrangements to pay expenses entirely unrelated to marketing, including check fraud losses, seed capital for new mutual funds, and settlement of disputes with third parties. If the fund advisers had not improperly used fund assets to subsidize these expenses, the fund advisers would have been required to pay the expenses using their own assets. From July 1999 to June 2004, BISYS provided over \$230 million from its administration fees for the benefit of the funds’ advisers or third parties pursuant to these side agreements. As a result, BISYS willfully aided and abetted and caused violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 12(b) and 34(b) of the Investment Company Act, and Rule 12b-1(d) thereunder.

BISYS

1. BISYS Fund Services, Inc., is a wholly-owned subsidiary of The BISYS Group, Inc., a publicly-traded Delaware corporation with its principal executive offices in Roseland, New Jersey. BISYS, based in Columbus, Ohio, administers 50 mutual fund families with total net assets of \$275 billion. BISYS, or its affiliates, also acts as a distributor, fund accountant, and transfer agent to numerous mutual fund families. BISYS is registered with the Commission as a transfer agent.

Background

2. BISYS provides numerous administration services to mutual fund families. By contract, BISYS was required to provide services, including preparing offering documents such as

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.

prospectuses and statements of additional information, compliance reports, and shareholder reports. In addition, BISYS makes its employees available to serve as officers of the mutual funds it administers and compiles materials, including reports, agreements, and fee comparisons, for fund directors to use at their meetings. BISYS also provides distribution services (including acting as principal underwriter through the creation of affiliates), as well as fund accounting and transfer agency services.

3. As banks expanded their product line to include proprietary mutual funds, BISYS' third-party administration business grew. Historically, banking law prevented banks or their affiliates from serving as administrator or distributor to mutual funds they created and sponsored. BISYS and other administrators stepped in to assume these roles for bank-sponsored funds. In part to secure and maintain clients, BISYS and other administrators agreed to dedicate a portion of their administration fee to market these funds, i.e., to provide "marketing budgets" or "fund support."

4. Between June 1999 and July 2004, BISYS maintained marketing arrangements for 27 mutual fund families in which it set aside approximately \$230 million from the administration fees paid by bank-sponsored mutual funds to use in marketing budgets.

5. The marketing arrangements generally worked as follows. First, BISYS and the adviser entered into a side agreement related to the proposed administration contract. Twelve of these agreements were memorialized in writing; the remaining 15 were oral. The side agreements described how the administration fee would be used by BISYS and the adviser. The uses frequently took the form of a sub-administration fee paid to the adviser, a marketing fee, and a net BISYS administration fee. Side agreements generally became binding upon the subsequent execution of new administration contracts with the associated mutual funds. After entering into the side agreements, the advisers recommended to the mutual fund boards that the funds enter into or renew administration and other service agreements with BISYS.

6. The side agreements between BISYS and the fund's adviser often provided that BISYS would dedicate a substantial portion of the administration fee paid by the fund to marketing the mutual funds (e.g., wholesaler costs, website design, advertising, and training). Before May of 2003, BISYS accounted for the entire administration fee paid by the fund as revenue and immediately booked the portion to be dedicated to marketing, designated by the side agreement, as a liability. BISYS booked the liability because it viewed the marketing portion of the fee as representing an obligation to the adviser.

7. For all practical purposes, the advisers determined what expenses would be covered by the marketing budget. The marketing plans to promote the mutual funds were created either by the adviser alone or jointly with BISYS.

8. Although BISYS paid the marketing expenses directly or by paying the adviser, BISYS rarely rejected reimbursement for a marketing expense. In fact, until the fall of 2003, BISYS had no formal guidelines or policies governing what constituted a "marketing expense." In some instances, BISYS even paid for non-marketing expenses through the marketing budget, such

as check fraud losses, seed capital for new mutual funds, settlement for losses due to errors, and settlement for disputes with a custodian.

9. BISYS provided the advisers with periodic updates of the balance in their marketing budget. With some advisers, this budget went into a deficit position, i.e., the adviser spent more on marketing than was permitted by the side agreement. In certain cases in which there was a marketing budget deficit, BISYS and the adviser agreed that BISYS would eliminate some or all of the deficit if the adviser would recommend to the fund board that it extend BISYS' administration contract.

10. These side arrangements, written or oral, were not disclosed to the respective mutual funds' boards or shareholders. Fund boards were generally informed that BISYS spent a portion of its administration fee on marketing the mutual funds. The fund boards were not informed that BISYS and the adviser had entered into side agreements before the adviser recommended to the fund board of directors that BISYS be awarded an administration agreement. The arrangements also were not included in any of the funds' Rule 12b-1 plans. There was no disclosure to shareholders of the marketing arrangements until the fall of 2003, and then the disclosures were incomplete and misleading.

11. BISYS failed to make these disclosures even after its former general counsel received legal advice that BISYS could be liable for aiding and abetting the advisers' violations of the Investment Company Act unless the arrangements were disclosed to fund directors.

12. Once BISYS terminated a marketing arrangement and stopped accruing money dedicated to marketing a mutual fund family, it handled a positive balance in one of three ways: (1) BISYS used the balance to pay for marketing expenses until it was exhausted; (2) BISYS paid the balance to the adviser; or (3) BISYS retained the balance. From July 1, 1999 to the present, BISYS retained \$9,698,835 from those terminated arrangements. On the occasions in which the balance was negative upon termination, BISYS either absorbed the loss or the adviser repaid BISYS for the loss.

BISYS and Adviser A's Relationship

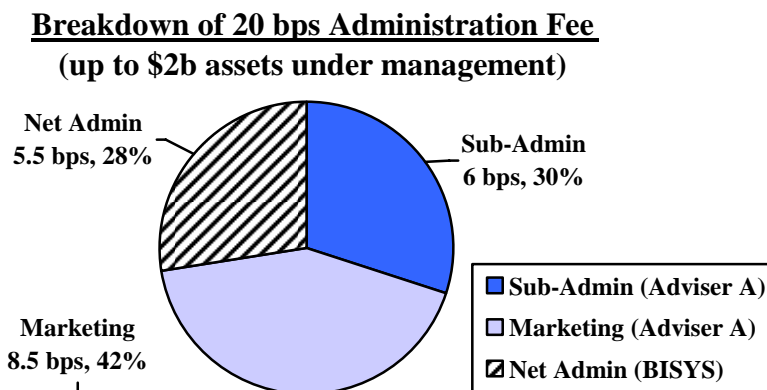
13. BISYS' marketing arrangements varied both in form and amount from one fund family to another. One relationship between BISYS and an Adviser/Bank ("Adviser A") included a variety of components, some of which were present in other arrangements.

14. The relationship between BISYS and Adviser A's mutual fund group ("Mutual Funds") was governed by a written administration agreement approved by the Mutual Funds' board of trustees. The administration agreement provided that BISYS would receive a 20 basis point ("bps") fee for administrative services. In mid-1999, BISYS and Adviser A began to discuss renewing the mutual fund's administration agreement for a two-year term. In connection with these discussions, BISYS and Adviser A entered into a side agreement, setting forth the terms for the marketing budget. Approximately one year later, in late 2000, BISYS and Adviser A began discussing a five-year renewal of its administration agreement, and entered into another side

agreement. In addition to these undisclosed side agreements, BISYS and Adviser A also entered into a consulting agreement in 2000. Under this agreement, Adviser A recommended that the Mutual Funds pay BISYS an excessive fee for securities lending services, in exchange for BISYS paying part of the fee back to Adviser A.

15. In October 1999, BISYS and Adviser A executed a side letter to memorialize their arrangement. In the side agreement, BISYS agreed to pay a specific amount of its administration fee to Adviser A for marketing and sub-administration in exchange for Adviser A recommending to the Mutual Funds' trustees that they enter into a contract extension with BISYS to provide administration services. The side letter was so critical to Adviser A that a senior executive vice president of Adviser A told a senior BISYS officer that the side letter was a "deal breaker" and that if BISYS "won't do it," one of its competitors will.

16. In the 1999 side letter, Adviser A agreed to recommend that the Mutual Funds extend BISYS' contract for administration and fund accounting services, at a stated fee of 20 bps, so long as BISYS agreed to pay Adviser A 5 to 6 bps, for providing sub-administration services, and BISYS agreed to accrue between 8.5 bps and 12.5 bps (less any waivers) plus \$200,000 per year for Adviser A to use for marketing. For assets under management up to \$2 billion, for example, administration fees were divided as follows:



The 1999 side letter, therefore, essentially provided that the 20 bps payment under the soon-to-be entered administration contract would be split two ways: one-fourth to BISYS, and three-fourths back to Adviser A (in the form of sub-administration and marketing payments).

17. In 1999, Adviser A had spent more than BISYS had accrued in the marketing budget. Accordingly, in addition to the fee described above, BISYS agreed to forgive up to \$1.2 million in overspending from the marketing budget. Adviser A then recommended to the Mutual Funds' trustees that BISYS' contract be extended for two years.

18. In 2000, BISYS and Adviser A entered into a new side agreement in connection with the renegotiation of the overall administration agreement to provide administration services for a five-year term. In the 2000 side letter, the proposed administration fee remained 20 bps. The

side letter also noted that the marketing budget deficit, which had been forgiven as a result of the 1999 side letter, had again grown. In December 2000, the deficit stood at \$3.5 million. In exchange for Adviser A's recommendation to the Fund trustees that they renew the BISYS administration contract for five years, BISYS agreed not to carry forward the \$3.5 million fund support deficit. The parties agreed that BISYS could recoup \$1 million of this deficit by charging the Mutual Funds a separate 2 bps fund accounting fee for fund accounting services. Previously, fund accounting services did not require a separate fee – the services were included in the overall 20 bps gross fee for administration and fund accounting services.

19. Although forgiving \$2.5 million of the marketing deficit was a critical term of the 2000 side letter, the president of the Mutual Funds, who was an Adviser employee, wrote to an internal auditor for Adviser A that the deficit was “not viewed as a shareholder issue,” and Adviser A did not disclose the fact of the deficit or the side letter itself to the independent trustees.

20. From July 1999 through June 2004, Adviser A spent approximately \$17.3 million from the marketing budget. Adviser A spent this money on marketing, but also on expenses such as printing brochures, the president of the Mutual Funds' salary, initiation fee and monthly dues for a golf country club, and settling a dispute Adviser A had had with a custodian. BISYS maintained the marketing budget for Adviser A until October 2004. Between June 2004 and October 2004, BISYS officers indicated that they wanted the marketing arrangements to cease, and specifically, that they wanted the side letters to no longer govern this relationship. The marketing arrangement apparently was terminated by BISYS on or about October 1, 2004. When the marketing budget was terminated, the Mutual Funds' gross administration fee was reduced by 5 bps.

BISYS' Consulting Agreement with Adviser A

21. In addition to the marketing budgets, BISYS and Adviser A entered an agreement paying BISYS an excessive fee for administration of a securities lending agreement. BISYS paid a part of its fee for providing these services back to Adviser A in exchange for Adviser A recommending that the Mutual Funds retain BISYS to provide these services. On March 13, 2000, Adviser A and BISYS entered into a consulting agreement in which Adviser A agreed to provide general consulting services to BISYS “in connection with marketing efforts on behalf of” the Mutual Funds for an unspecified fee. Adviser A received \$1.16 million over a two-year period from this agreement. Adviser A did not disclose this consulting agreement to the Mutual Funds' trustees.

22. The fees paid by BISYS to Adviser A for the consulting agreement originated from the Mutual Funds' securities lending program. Through this program, the Mutual Funds loaned securities in their portfolios for short-term use by other financial institutions. BISYS administered it for the Funds, and another financial institution facilitated the loans. The Mutual Funds received revenue from securities lending, some of which was paid to BISYS and the other financial institution as fees for operating the program. At the time the program originated, the fee split was 50% to the Mutual Funds and 50% to be divided by BISYS and the other financial institution. Part of BISYS' securities lending fee was then used to pay Adviser A for purported consulting services. Under the agreement, Adviser A would “render advice and answer inquiries concerning the

marketing of the Funds,” “assist in the preparation and implementation of marketing plans for the Funds,” and “assist in the preparation and distribution of sales and advertising materials for the Funds.”

23. At its core, the consulting agreement was merely a vehicle to pay money otherwise due to the Mutual Funds from the securities lending program to Adviser A. The consulting services ostensibly provided were those that Adviser A was expected to perform and had previously been performing without receiving this additional compensation. Further, when the consulting agreement ended, the fee split for the securities lending program changed to provide more revenue to the Mutual Funds (70%) and less to BISYS. BISYS and the other financial institution split the remaining 30%. Accordingly, the securities lending program contained excessive fees that could have been reduced to provide shareholders a greater return on their investments in the Mutual Funds.

Lack of Disclosure to Board of Trustees and Fund Shareholders

24. Neither Adviser A nor BISYS disclosed their agreement regarding the marketing arrangement to the Mutual Funds’ independent trustees. Prior to September 2003, the Mutual Funds’ independent trustees knew generally that BISYS spent a portion of its 20 bps administration fee on marketing the Mutual Funds. The independent trustees also did not know that the marketing budget was ever in an overspent position. In fact, the independent trustees did not even know of the existence of the 1999 or 2000 side letters or the consulting agreement until late 2004 or early 2005.

25. The Mutual Funds’ independent trustees also never discussed whether the marketing budgets should be included in the Mutual Funds’ Rule 12b-1 plan. They were not furnished with the side letters, or any detailed information about the marketing budgets, when considering whether to adopt or renew the Mutual Funds’ 12b-1 plans. As a result, when they approved the five-year administration contract at a December 2000 board meeting, they were not privy to all the pertinent facts of Adviser A’s arrangement with BISYS.

26. Adviser A and BISYS each participated in drafting prospectuses and Statements of Additional Information (“SAIs”) for the Mutual Funds. Shareholders received no disclosure concerning the marketing arrangements until the Funds’ November 28, 2003 SAI, in which the Mutual Funds disclosed only that “[t]he Distributor [BISYS] and/or its affiliates, may finance from their own resources, certain activities intended to result in the distribution of the Funds’ Class A Shares and Class B Shares.” This belated disclosure, however, was misleading and failed to provide shareholders information concerning the existence or magnitude of the conflict of interest created by the marketing budget. BISYS did not, in fact, finance distribution activities from its own resources but rather paid for marketing with fund assets through its inflated administration fees.

27. The Mutual Funds’ shareholders were not informed that the undisclosed marketing agreements harmed them by diverting part of the inflated administration fee to benefit Adviser A (by subsidizing expenses Adviser A would otherwise have incurred on behalf of the Mutual Funds)

and BISYS (through renewal of administration contracts).

BISYS Restructures its Fund Services Business

28. BISYS took the following acts after its current chief executive officer became aware of the above-conduct:

a. BISYS froze funds held for marketing arrangements, terminated the existing arrangements, and restructured agreements with certain fund clients;

b. BISYS retained outside legal counsel to oversee an internal review of marketing arrangements with its clients. Outside legal counsel reported findings directly to the BISYS Group Board and, in March and April 2005, made presentations of its findings to the staff of the Securities and Exchange Commission;

c. Management took disciplinary actions and BISYS convened a special committee of its Board to evaluate the conduct of certain employees, resulting in changes of a number of key personnel; and

d. BISYS adopted new policies and procedures for its fund administration business and instituted an employee training program directed at the practices that were the subject of the investigation.

Violations

29. As a result of the conduct described above, BISYS willfully aided and abetted and caused the advisers' violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

30. As a result of the conduct described above, BISYS willfully aided and abetted and caused the advisers' violations of Section 34(b) of the Investment Company Act, which prohibits the making of any untrue statement of a material fact in any registration statement.

31. As a result of the conduct described above, BISYS willfully aided and abetted and caused the mutual funds' violations of Section 12(b) and Rule 12b-1(d), prescribed by the Commission pursuant to the Investment Company Act, which provides that any person who is a party to any agreement with an open-end management investment company relating to a written plan describing all material aspects of the proposed financing of distribution of securities of which it is the issuer shall have a duty to furnish such information as may reasonably be necessary to an informed determination by the directors of such investment company of whether such plan should be implemented or continued.

BISYS' Remedial Efforts

32. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by BISYS and cooperation afforded the Commission staff.

33. BISYS will continue to cooperate with the Commission in future proceedings.

Undertakings

Respondent undertakes to:

34. a. Respondent shall retain, within 45 days of the date of entry of the Order, the services of an Independent Consultant and an Independent Distribution Consultant not unacceptable to the Commission's Staff. Respondent shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant and Independent Distribution Consultant. Respondent shall retain the Independent Consultant to conduct a comprehensive review of: (1) BISYS' current policies and procedures governing receipt of revenue and payment of expenses associated with its administrative, fund accounting, and distribution services to determine whether such policies and procedures provide reasonable assurance that the revenue is received and expenses are paid in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940; and (2) BISYS' current policies and procedures with respect to the accuracy of the disclosures to mutual fund boards concerning agreements between BISYS and the funds, advisers, banks and any related entities for administrative, fund accounting, and distribution services to determine whether such policies and procedures provide reasonable assurance that such disclosures are in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

b. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to BISYS' files, books, records and personnel as reasonably requested for the review described in 34.a. above.

c. Within 45 days of the date of entry of the Order, Respondent shall submit to the Independent Distribution Consultant for review (and simultaneously to the Commission Staff) a plan ("Distribution Plan") pursuant to which the Independent Distribution Consultant will administer and distribute the monetary sums ordered to be paid pursuant to IV.B below, and any interest or earning thereon. The Distribution Plan shall address how such monetary sums shall be distributed to benefit the 27 mutual fund families (for the benefit of their shareholders). Public notice shall be given of the plan. The Distribution Plan shall not be unacceptable to the Independent Distribution Consultant and to the staff of the Commission.

d. Respondent shall further retain the Independent Consultant at the conclusion of the review, which in no event shall be more than 75 days after the date of entry of the Order, to submit to BISYS' Board of Directors and to the Commission's Staff an Initial Report. The Initial Report shall address: (1) whether BISYS' current policies and procedures governing receipt of revenue and payment of expenses associated with its administrative, fund accounting, and distribution services provide reasonable assurance that the revenue is received and expenses are paid in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940; and (2) whether BISYS' current policies

and procedures with respect to the accuracy of the disclosures to mutual fund boards concerning agreements between BISYS and the funds, advisers, banks and any related entities for administrative, fund accounting, and distribution services provide reasonable assurance that such disclosures are in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940. To the extent that the Independent Consultant finds deficiencies in BISYS' policies described in (1) and (2) above, the Independent Consultant shall recommend such additional policies and procedures as are necessary to provide reasonable assurance of compliance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

e. Within 105 days after date of entry of the Order, Respondent shall in writing advise the Independent Consultant and the Commission's Staff of the recommendations from the Initial Report that it has determined to accept and the recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that Respondent considers unnecessary or inappropriate, Respondent shall explain why the objective or purpose of such recommendation is unnecessary or inappropriate and provide in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

f. Respondent shall further retain the Independent Consultant to submit a Final Report thereon to BISYS' Board of Directors and to the Commission's Staff within 145 days after the date of entry of the Order. The Final Report must recite the efforts the Independent Consultant undertook to review (1) BISYS' current policies and procedures governing receipt of revenue and payment of expenses associated with its administrative, fund accounting, and distribution services to determine whether such policies and procedures provide reasonable assurance that the revenue is received and expenses are paid in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940; and (2) BISYS' current policies and procedures with respect to the accuracy of the disclosures to mutual fund boards concerning agreements between BISYS and the funds, advisers, banks and any related entities for its administrative, fund accounting, and distribution services to determine whether such policies and procedures provide reasonable assurance that such disclosures are in accordance with the applicable provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Additionally, the Final Report shall set forth in detail the Independent Consultant's recommendations, if any, and any substitute procedures offered by Respondent in accordance with Section 34.e. above, and set forth a reasonable time period or time periods, not to exceed 205 days from the date of entry of the Order, for BISYS to implement each of the Independent Consultant's recommendations. The Final Report shall also describe how Respondent proposes to implement those recommendations within the time periods set forth in the Final Report.

g. Respondent shall further retain the Independent Consultant to conduct a follow-up review of BISYS' efforts to implement each of the recommendations contained in the Independent Consultant's Final Report. This follow-up review shall be completed no earlier than 12 months after the date of entry of the Order and no later than 16 months after the date of entry of the Order. As part of the follow-up review process, Respondent shall retain the Independent Consultant to submit a follow-up report to BISYS' Board of Directors and the Commission's Staff no later than 18 months after the date of entry of the Order. The follow-up report must set

forth the details of BISYS' efforts to implement each of the recommendations contained in the Final Report, and must separately state whether BISYS has fully complied with each of the recommendations in the Final Report.

h. For good cause shown, and upon receipt of a timely application from the Independent Consultant, Independent Distribution Consultant, or Respondent, the Commission Staff may extend any of the procedural dates set forth above.

i. To ensure the independence of the Independent Consultant and Independent Distribution Consultant, Respondent: (1) shall not have authority to terminate the Independent Consultant or Independent Distribution Consultant, without the prior written approval of the Commission's Staff; (2) shall compensate the Independent Consultant or Independent Distribution Consultant, and persons reasonably engaged to assist them, for services rendered pursuant to the Order at their reasonable and customary rates; and (3) shall not be in and shall not have an attorney-client relationship with the Independent Consultant or Independent Distribution Consultant and shall not seek to invoke the attorney-client or any other privilege to prevent the Independent Consultant or Independent Distribution Consultant from transmitting any information, reports, or documents to the Commission or its staff.

j. To further ensure the independence of the Independent Consultant and Independent Distribution Consultant, Respondent shall require the Independent Consultant and Independent Distribution Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant and Independent Distribution Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BISYS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreements will also provide that the Independent Consultant and Independent Distribution Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant or Independent Distribution Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BISYS, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

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

Accordingly, pursuant to Section 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent BISYS shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 12(b) and 34(b) of the Investment Company Act, and Rule 12b-1(d) thereunder.

B. IT IS FURTHER ORDERED that Respondent shall, within 30 days of the entry of this Order, pay disgorgement in the amount of \$9,698,835 and prejudgment interest in the amount of \$1,703,981.66 (for a total amount of \$11,402,816.66) and \$10,000,000.00 in civil money penalty to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies BISYS Fund Services as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036.

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

D. Respondent shall comply with the undertakings enumerated in Section 34 above.

By the Commission.

Nancy M. Morris
Secretary