

ACT IAA
SECTION 206
RULE _____
PUBLIC
AVAILABILITY 9/2/99



RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

September 2, 1999
Ref. No. 98-684-OCC
BISYS Fund Services, Inc.

Your letter dated September 1, 1999 requests our assurance that we would not recommend enforcement action to the Commission under Section 206 of the Investment Advisers Act of 1940 ("Advisers Act") if the sponsor of a mutual fund wrap fee program defers, and eventually excuses, the payment of certain expenses by the client so long as the client continues its participation in the program for a specified period of time.

Facts

BISYS Fund Services, Inc. and its affiliates (collectively, "BISYS") provide administration, fund accounting, transfer agency, and distribution services to registered open-end management investment companies ("mutual funds"). According to your letter, BISYS has developed a proprietary mutual fund wrap fee program ("Program") that it believes its investment manager customers ("Sponsors") can market successfully to investors.¹ BISYS will assist each Sponsor in customizing and developing the Program, and will provide consulting and training services to the Sponsor. The Sponsors will be investment advisers registered under the Advisers Act, or entities that are not registered because they are not within the Advisers Act's definition of an investment adviser, such as banks.

Using asset allocation models, the Sponsor will develop an allocation strategy for each investor ("client") and will recommend a variety of mutual funds ("Eligible Funds") among which the client's assets will be allocated. The Eligible Funds may be advised by a Sponsor or its affiliates. The Sponsors will charge clients participating in the Program an annual fee ("Program Fee"), calculated as a percentage of each client's assets invested through the Program, to cover investment advisory services, custody, and the administrative expenses of operating the Program. In addition, each Eligible Fund into which a client's assets are invested will charge the fees described in its prospectus.² Clients also may pay a separate service fee, as described below.

¹ You state that the Program will be organized and operated in accordance with Rule 3a-4 under the Investment Company Act of 1940 ("1940 Act"). Rule 3a-4 provides a non-exclusive safe harbor from the definition of an investment company for programs that provide discretionary advisory services to clients. You have not asked, and we take no position concerning, whether the Program, as described in your letter, fits within the Rule 3a-4 safe harbor.

² According to your letter, investments in the Eligible Funds will not be subject to any front-end or deferred sales charges that otherwise may be charged by the Eligible Funds. Investments in the Eligible Funds may, however, be subject to fees charged pursuant to a distribution plan under Rule 12b-1 under the 1940 Act ("Rule 12b-1 fees"), and brokers (as described below) may receive these fees.

Each Sponsor will market the Program to clients through registered broker-dealers ("Brokers"), which may be affiliates of the Sponsor. You assert that, as a condition to its participation in the Program, each Broker will enter into an agreement with each client that will, among other things, authorize the Broker to purchase shares of the Eligible Funds on the client's behalf. The Broker will provide a variety of services in connection with the Program, including determining the potential client's eligibility for the Program, discussing the recommended asset allocation with the client, opening the client's account, receiving the client's initial and subsequent investments, and arranging for the purchase of the Eligible Funds recommended by the Sponsor. The Broker also will provide ongoing services to each client, including answering client inquiries, periodically reviewing the account's performance, annual tax reporting, and meeting annually with the client to reassess the propriety of the current asset allocation strategy.³ In order to compensate the Broker for services rendered to clients, the Sponsors will pay the Broker a fee ("Broker's Fee") equal to a percentage of the client's investment through the

³ Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "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...." Part (c) of that subsection provides an exception from that definition for broker-dealers whose advisory duties are "solely incidental" to their brokerage business, and who receive no "special compensation" for investment advice. We believe that, at a minimum, the advice rendered to Program clients by the Brokers would not be "solely incidental" to their brokerage business. See Investment Company Act Release No. 21260, n.7 (July 27, 1995) (release proposing Rule 3a-4 under the 1940 Act). Brokers therefore would meet the definition of an investment adviser and would not be able to rely on the broker-dealer exception from that definition.

A Broker participating in the Program therefore would be required to meet some other exception from the definition of an investment adviser or comply with all applicable regulations and disclosure requirements under the Advisers Act, including providing a brochure to clients consistent with Rule 204-3. In addition, a Broker would be required under Section 206 of the Advisers Act to evaluate whether the fees that it charges, in light of the services that it provides under the Program, are higher than those charged by other advisers for the same or similar services, and, if so, disclose that fact. See *Shareholder Services Corp.* (pub. avail. Feb. 3, 1989). Finally, you have not asked, and we take no position concerning, whether a Broker would be acting as a broker for a person other than a client -- on account of the Broker's receipt of the Broker's fee, Rule 12b-1 payments (see *supra* note 2), or other compensation -- for purposes of Section 206(3) of the Advisers Act. Section 206(3) prohibits, among other things, any adviser from effecting any sale or purchase of any security for the account of a client while acting as a broker for another person, without, among other things, obtaining the client's prior consent.

Finally, the Division of Market Regulation has asked us to inform you that the Broker's receipt of fees from a Sponsor, or from any person other than its customer, may indicate that the Broker is acting as agent in the transaction for the third-party provider of its fees as well as agent for the customer. Brokers participating in this Program are therefore reminded of their obligations under Rule 10b-10 under the Securities Exchange Act of 1934, to provide each customer with written, transaction-specific disclosure of the Broker's capacity in each transaction that it effects on behalf of a customer, as well as whether the Broker, acting as agent, receives remuneration from any third party in connection with the transaction.

Program. BISYS currently expects the Broker's Fee to equal 3% of the client's initial and subsequent investments through the Program.

According to your letter, clients may pay a separate fee to a Sponsor to help recoup expenses paid out as Broker's Fees. Clients may do this through one of two payment options.⁴ First, the client may, at the initiation of the advisory relationship and upon each subsequent investment, pay the Sponsor a fee ("Front-end Fee") equal to the amount paid by the Sponsor as the Broker's Fee. Alternatively, clients may defer paying the Front-end Fee by selecting a contingent payment option ("Contingent Fee"), which would be assessed only if the client terminates participation in the Program within the first 3 years of that investment.⁵ Each Sponsor will pay the Broker's Fee regardless of which payment option the client chooses. The Sponsor will use any amounts collected through the Front-end or Contingent Fee option to help recoup amounts paid to the Brokers for services that they have provided to clients in connection with the Program. If the client chooses the Contingent Fee option, the Sponsor will use other assets, including borrowing from unaffiliated entities, to finance the Broker's Fee.

Analysis

Section 206(2) of the Advisers Act makes it unlawful for an investment adviser "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." As a fiduciary, the adviser has an obligation to abide by the highest standards of conduct and must act in the best interests of the client. Because certain fee arrangements may have the effect of penalizing a client for ending the advisory relationship, or may make the client reluctant to terminate an unsatisfactory adviser, the staff has taken the position that an adviser's imposition of certain fees upon the termination of an advisory relationship may be inconsistent with the adviser's fiduciary duty, and may violate Section 206 of the Advisers Act.⁶

You believe that the Contingent Fee does not raise similar concerns. You argue that the Contingent Fee simply reimburses the Sponsors for expenses incurred in financing payments to the Brokers and thus is not a penalty. In effect, you argue that deferring the imposition of certain expenses until the client terminates the advisory relationship is not inconsistent with the adviser's fiduciary obligation to the client so long as those fees are fully disclosed and agreed to in

⁴ You maintain that the aggregate of all fees charged in connection with the Program will not exceed limits on the payment of "sales charges" as defined in Rule 2830 of the Rules of Conduct of the National Association of Securities Dealers.

⁵ The Contingent Fee will equal 3% of the client's assets invested in the Program if the client terminates in the first year of the investment, 2% in the second year, 1% in the third year, and 0% after the third year. According to your letter, the Contingent Fee will be computed on a first-in, first-out basis. You also represent that the Contingent Fee will never exceed the amount that the client would have paid as the Front-end Fee.

⁶ See National Deferred Compensation (pub. avail. Aug. 31, 1987) ("[a]n adviser may not fulfill its fiduciary obligations if it imposes a fee structure penalizing a client for deciding to terminate the adviser's service or if it imposes an additional fee on a client for choosing to change his investment") (footnote omitted).

advance, and do no more than compensate the Sponsor for services already provided by the Broker to the client.

We agree that a fee paid to an investment adviser by a client for services previously rendered to the client would not violate Section 206 solely because the fee was payable upon termination of the advisory relationship, if at all. The staff has taken the position that certain fees, directly attributable to services provided by the adviser, may be assessed upon the termination of the advisory relationship.⁷

Investment advisers have a duty to disclose all material information to clients in order to highlight potential or actual conflicts of interest between them.⁸ Because a contingent deferred fee may have the effect of discouraging a client from terminating the advisory relationship, that fee is highly material to the client's decision-making process and must be disclosed under Section 206 of the Advisers Act. Indeed, based on the relevance of this information to a client's decision to enter into or retain the services of the adviser, we believe that the disclosure must be designed to ensure that the client's attention is directed to this information.⁹

You believe that each Sponsor's disclosure procedures will satisfy the disclosure requirements under Section 206. According to your letter, the Brokers will provide clients with a separate disclosure document not less than 48 hours before the client enters into the investment advisory agreement, or at the time of entering into the agreement if the client has the right to terminate the agreement within five business days without incurring any fees. Each Sponsor will receive the executed acknowledgment of receipt of the separate disclosure document no later than (1) the time that the client enters into the investment advisory agreement, or (2) the time when the client may terminate the agreement without penalty if the disclosure document is not transmitted to the client within 48 hours of the time that the agreement is entered into.¹⁰ You state that the disclosure document will, among other things, describe the services for which the Contingent Fee is paid, how it is calculated, that subsequent investments in the Program trigger the 3-year period for each investment, and that the Contingent Fee may act as a disincentive to terminating participation in the Program. You further represent that the separate disclosure document will provide that, if a client terminates his or her participation in the Program because of a change in a

⁷ See Stephenson and Co. (pub. avail. Dec. 29, 1980) (adviser that charged certain "wrapping-up" fees to clients who terminated their advisory contracts early would not necessarily violate Section 206 of the Advisers Act under certain circumstances); RDP Investments Ltd. (pub. avail. May 24, 1975) (certain "start-up" expenses could appropriately be deducted from the refund of pre-paid advisory services in connection with the early termination of the advisory contract without necessarily violating Section 206 of the Advisers Act).

⁸ SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92 (1963).

⁹ See, e.g., Investment Advisers Act Release No. 688 (July 12, 1979) (adopting release for Rule 206(4)-3 under the Advisers Act) (a solicitor's disclosure information must be contained in a separate document to ensure that the client's attention will be directed to it).

¹⁰ You state that the Sponsors will retain the written acknowledgments obtained from clients in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of that Sponsor. See Rule 204-2(e)(1) under the Advisers Act.

Sponsor's or Broker's personnel, the performance of the Program or the Eligible Funds, or the investment strategy of the Program or the Eligible Funds, the client may still be subject to the Contingent Fee.¹¹ We agree that the disclosure obligations under Section 206 regarding the Contingent Fee would be satisfied by the procedures that you propose.

Our positions are based on the facts and circumstances set forth in your letter. Any different facts or circumstances may require different conclusions.



Evan Geldzahler
Senior Counsel

¹¹ You maintain that the disclosures relating to the Contingent Fee are in addition to other disclosures to be made in connection with the Program itself. For example, you state that the Sponsors will, at a minimum, disclose that clients can avoid paying the Program Fee as well as the Front-end Fee or Contingent Fee by purchasing the Eligible Funds directly. See Shareholder Services Corp. (pub. avail. Feb. 3, 1989).

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Advisers Act; Section 206

September 1, 1999

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: BISYS Mutual Fund Asset Allocation Program

Ladies and Gentlemen:

We are writing on behalf of BISYS Fund Services, Inc. and its affiliates (collectively, "BISYS")¹ to request that the Staff advise BISYS that it would not recommend any enforcement action to the Securities and Exchange Commission based on Section 206 of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), if a mutual fund asset allocation program is marketed as described below.

Facts

BISYS provides administration, fund accounting, transfer agency and distribution services to the mutual fund industry. In that capacity, BISYS provides these services to approximately 900 mutual fund portfolios ("mutual funds") representing approximately \$200 billion in assets.

BISYS has developed an innovative way to finance payments made to brokers involved in the sale of a mutual fund asset allocation program (the "Program") that would be offered exclusively through BISYS's customers. The Program would be organized and operated in accordance with the provisions of Rule 3a-4 under the Investment Company Act of 1940, as amended (the "1940 Act"). A registered investment adviser or entity not within the definition of investment adviser under the Advisers Act, such as a bank, would serve as the Program sponsor (the "Sponsor").

¹ The BISYS Group, Inc., through its subsidiary BISYS Fund Services, Inc., maintains 16 limited purpose broker-dealers which each serve as a principal underwriter for one or more registered investment company clients of BISYS.

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Using asset allocation models, the Sponsor would develop an allocation strategy for a particular client and would recommend a variety of mutual funds ("Eligible Funds") among which the client's assets should be allocated based on that strategy. Many of the Eligible Funds would be advised by affiliates of the Sponsor.²

BISYS will assist in the design and development of the Program and will provide consulting and training to the Sponsor. For those Eligible Funds managed by the Sponsor or an affiliate, BISYS typically would serve as the fund's distributor and also might serve as administrator, transfer agent and/or fund accounting agent. For other Eligible Funds, BISYS would produce and mail client statements generally on a quarterly basis and provide other administrative services. Each client participating in the Program would be charged an annual fee, calculated as a percentage of the client's assets subject to the Program, to cover all investment advisory services, custody and administrative expenses of operating the Program. Each of the underlying mutual funds also would charge its customary fees as described in its prospectus.³

The Program would be marketed through registered broker-dealers (each, a "Broker"), which could be affiliates of the Sponsor. As a condition to its participation in the Program, each Broker will enter into an agreement with each of its clients, which would, among other things, authorize the Broker to purchase shares of the Eligible Funds on the client's behalf.

² It is anticipated that the Sponsor or an affiliate will manage 50% to 70% of the Eligible Funds, although we do not believe that the determination to grant the requested relief should change if the actual percentage is higher or lower than anticipated.

³ BISYS understands that these fees would include Rule 12b-1 fees, to the extent the Eligible Fund has adopted a Rule 12b-1 Plan, and that Brokers could receive 12b-1 payments from the Eligible Funds. These 12b-1 payments would be made for the customary purposes of distribution and servicing assistance at the Fund level, as contrasted with payments made to Brokers under the Program which will be made to assist with servicing clients at the Program level. BISYS understands that these services would not be duplicative. While the Brokers may have selling dealer agreements with the distributor of the Eligible Funds, neither the Brokers nor the Sponsor will act as a principal underwriter or dealer with respect to the Eligible Funds. Clients participating in the Program will not be subject to any front-end sales charge imposed on the purchase of the Eligible Funds' shares. The exemption from any applicable sales load would be accomplished by a scheduled variation from the relevant Fund's sales load schedule pursuant to Rule 22d-1 under the 1940 Act. The class of Eligible Fund shares sold to Program participants would not be subject to a deferred sales charge.

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The Brokers will provide a variety of services in connection with the Program. Generally, the Brokers will perform the full range of services provided by brokers in typical mutual fund asset allocation programs.⁴ Among other things, they will:

- determine whether a potential client is eligible for the Program and recommend another investment alternative to those who are not eligible;
- speak with clients in detail about, and answer their questions about, the Program, with the goal of explaining how the Program can help clients achieve their particular investment needs;
- help the client fill out the client questionnaire for the Program;
- discuss the recommended asset allocation strategy with the client;
- open an account for a client who decides to participate in the Program and, in connection therewith, receive the client's initial investment in the Program and any subsequent investments in the Program and transmit them to the Sponsor;
- arrange for the purchase of the Eligible Funds recommended by the Program for the client's account;
- calculate the value of a client's account following dividend reinvestments in the Eligible Funds;
- provide clients with annual tax reporting; and
- provide important ongoing services to each client, including answering client inquiries regarding the Program, reviewing periodically with the client the performance of the client's portfolio of Eligible Funds and meeting at least

⁴ The Brokers will be acting solely as agents for their clients. In Linsco/Private Ledger Corp. (pub. avail. November 1, 1994), the Staff stated that "Section 22(d)'s restrictions do not apply to a broker, as that term is defined in the 1940 Act." The Staff concluded that, because the broker-dealer was acting as agent for its customers in purchasing and redeeming investment company shares, Section 22(d) did not apply.

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annually with the client to determine whether the recommended asset allocation strategy should be changed based on changes in the client's financial profile.

For these services rendered, the Sponsor would pay the Broker a fee (the "Broker's Fee")⁵, currently expected to be 3%, based on the assets invested in the Program by the Broker's client. Clients would be charged a front-end fee (the "Front-End Fee"), currently expected to be 3%, which would be assessed on new assets each time assets were invested in the Program. Clients would be able to avoid paying the Front-End Fee by selecting a contingent payment option, under which a fee, similar to a contingent deferred sales charge (the "Contingent Fee"), would be assessed if the client terminates his or her participation in the Program within the first three years of investment.⁶ In no circumstance would the Contingent Fee result in a client paying a greater amount than the Front End Fee.

All of the Front-End Fee collected by the Sponsor on newly invested assets would be paid to the Broker as the Broker's Fee. If a client chooses the Contingent Fee option, the Sponsor would finance its obligation to pay the Broker's Fee by borrowing from an unaffiliated third party (the "Lender"). The Sponsor would repay the Lender from the wrap fees it collects under the Program, as well as from any of its other revenue sources, including, if applicable, the Contingent Fee.

⁵ The Broker's registered representative who sold the Program to the client typically would receive a portion of the Broker's Fee.

⁶ The Contingent Fee would be applied to the lesser of the amount invested in the Program by the client (without giving effect to any appreciation in the value of the investment) and the value of the client's account at the time the client terminates his or her participation in the Program. The Contingent Fee would be assessed on a sliding scale, computed under a first-in, first-out method, which assumes, as an example, that a withdrawal is made first of amounts representing shares of the Eligible Funds held for at least three years, then amounts representing shares of the Eligible Funds held for at least two years but less than three years, then amounts representing shares of the Eligible Funds held for at least one year but less than two years, and finally, amounts representing shares of the Eligible Funds held for less than one year. The Contingent Fee is expected to equal 3% of the amount subject to charge if the Program is terminated within the first year of investment, 2% after the first year but before the second year, 1% after the second year but before the third year, and 0% after the third year. Different periods could be used, but only if consistent with the principles set forth herein.

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The Contingent Fee option is a material aspect of the Program and, to satisfy the disclosure requirements of Section 206 of the Advisers Act, the Sponsor believes that each client should be expressly informed about it. We believe the disclosure procedures described below will satisfy the disclosure requirements of Section 206 of the Advisers Act. As part of these procedures, the Sponsor will provide a separate document (the "Contingent Fee Summary") to each Broker who will agree to provide it to each of its clients. The Contingent Fee Summary will describe the Contingent Fee, its purpose and how it is calculated and also will describe the services for which the Contingent Fee is paid. The Contingent Fee Summary will provide that initial and subsequent investments in the Program may be subject to the Contingent Fee depending on when the client terminates his or her participation in the Program, and that the Contingent Fee may act as a disincentive to terminate the client's participation in the Program. The Contingent Fee Summary also will provide that if the client terminates his or her participation in the Program because of a change in the personnel of the Sponsor or Broker, or a change in the investment strategy or performance of the Program or one or more Eligible Funds, the client still may be subject to the Contingent Fee depending on when the client terminates his or her participation in the Program. The Contingent Fee Summary will be delivered to the client at least 48 hours before the client enters into the Program or at the time the client enters into the Program if the client has the right to terminate his or her participation in the Program without penalty within five business days after entering into the Program.⁷ The Sponsor will receive from the client a written acknowledgment of his or her receipt of the Contingent Fee Summary. This acknowledgment must be received by the Sponsor at the time the client enters into the Program or, if the client has the right to terminate his or her participation in the Program without penalty within five business days after entering into the Program, no later than such fifth business day. The Sponsor will keep all written acknowledgments received from clients who participate in the Program in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Sponsor.⁸

For the reasons discussed below, we believe that the imposition of the Contingent Fee does not raise an issue under the anti-fraud provisions of Section 206 of the Advisers Act.

Discussion

Section 206 of the Advisers Act. Section 206(2) of the Advisers Act makes it unlawful for an investment adviser "to engage in any transaction, practice or cause of business which operates as a fraud or deceit upon any client or prospective client." In other contexts, the Staff has taken the position that an adviser's imposition on a client of a penalty for terminating the advisory

⁷ See Rule 204-3(b)(1) of the Advisers Act.

⁸ See Rule 204-2(e)(1) of the Advisers Act.

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relationship is inconsistent with the adviser's fiduciary obligations to deal fairly with and in the best interests of its clients and, therefore, may violate the anti-fraud provisions of Section 206 of the Advisers Act.

In *National Regulatory Services, Inc.* (pub. avail. December 2, 1992), prepaid wrap fees were forfeited by the client upon termination of the wrap fee arrangement. The Staff wrote, "In light of the personal nature of the advisory contract, a client should not be put in a position where it is impossible to end the relationship without suffering a financial loss. Therefore, wrap fee clients must be able to terminate the wrap fee arrangement at any time without penalty (i.e., sponsors must refund prepaid wrap fees upon termination)." See also *Robert D. Brown Investment Counsel, Inc.* (pub. avail. July 19, 1984) ("Where the basis for [adviser/client] relationship is ended, and the adviser, accordingly, is unable to continue to perform services under the contract, in our view the adviser's fiduciary duties precludes its receipt of compensation for services it is not able to perform.")

In *National Deferred Compensation, Inc.* (pub. avail. August 31, 1989), an adviser assessed and retained a sliding scale "surrender fee" to a client's investment advisory account where the account was terminated by client within the first five years of investment. The Staff wrote that the imposition by the adviser of the surrender fee may violate Section 206 of the Advisers Act. Citing *SEC v. Capital Gains Research Bureau*, 375 U.S. 180 (1963), the Staff stated that an investment adviser is a fiduciary and must act in the best interest of the client. An adviser may not fulfill its fiduciary obligations if it imposes a fee structure that penalizes a client for deciding to terminate the adviser's service.

We believe the relevant facts here are distinguishable from those in the no-action letters discussed above and that the Contingent Fee does not raise the concerns described therein. First, the imposition of the Contingent Fee does not subject the client to a financial loss. The Contingent Fee is not a "penalty" imposed on the client for terminating the Program, as it was in *National Deferred Compensation, Inc.* The Contingent Fee is being paid for services rendered by the Brokers to their clients. In addition, the Contingent Fee is a beneficial economic alternative to the Front-End Fee option, since, because it declines over time, the Contingent Fee may be less costly than the Front-End Fee option.⁹ Second, the Contingent Fee, while it may be retained by the Sponsor, is not "compensation" for services that will not be performed, as it was in *Robert Brown*. The Contingent Fee is structured to reimburse the Sponsor for its expenses incurred to finance payments to the Brokers. The Contingent Fee is merely a distribution-type fee that will be charged to the client in order to defray the Sponsor's cost of financing the Broker's Fee. The

⁹ As stated above, in no circumstance would the Contingent Fee option result in the client paying a greater amount than the alternative Front-End Fee option.

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fees to be assessed under the Program are similar to the front-end and back-end sales loads charged by many mutual funds. Clearly, these distribution-related charges are permitted when imposed directly by a mutual fund. Imposing them at the Sponsor level should not make them impermissible.¹⁰ Finally, the Front-End Fee and the Contingent Fee will be fully disclosed to clients in the documentation describing the Program. This disclosure, among other things, will make it clear that clients can avoid paying the Contingent Fee simply by choosing the Front-End Fee option and may avoid all fees, including the Program fee, by purchasing the underlying funds directly.¹¹ Under the circumstances where, as here, these fees are fully disclosed to clients and the alternatives are disclosed clearly, we do not believe the anti-fraud provisions of Section 206 should apply.

Based upon the foregoing, we respectfully request confirmation that the Staff will not recommend any enforcement action against BISYS, the Sponsors or their affiliates if the Program is implemented and marketed as described herein.

Please feel free to telephone Richard Horowitz at (212) 806-5513 or Stuart H. Coleman at (212) 806-6049 with any questions or comments you may have.

Very truly yours,



STROOCK & STROOCK & LAVAN LLP

¹⁰ The fees would not exceed the NASD limits on the payment of "sales charges," as defined in Rule 2830 of the NASD Conduct Rules.

¹¹ In Shareholder Services Corp. (pub. avail. February 3, 1989) (an advisory service allocated client funds among a variety of no-load mutual funds and clients were charged an annual management fee payable to the adviser and a cash referral fee payable to a solicitor), the Staff stated that, assuming an adviser's fees are reasonable, "at a minimum the adviser must disclose to clients that (1) in addition to the advisory fee charged by the investment adviser (and the solicitation fee it pays), each investment company in which a client's funds may be invested also pays its own investment advisory fees and other expenses and (2) if the client deals directly with the no-load fund, he or she would neither pay a transaction fee nor an advisory fee."