

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2884 / May 28, 2009

INVESTMENT COMPANY ACT OF 1940
Release No. 28749 / May 28, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13492

In the Matter of

J. David Huber

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER AS TO J. DAVID HUBER**

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 Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against J. David Huber (“Huber” 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 him 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, Pursuant to Section 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order as to J. David Huber (“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 an undisclosed agreement between BISYS Fund Services, Inc. ("BISYS"), a mutual fund administrator, and a mutual fund adviser, AmSouth Bank ("AmSouth"), which was facilitated by former BISYS president and former chairman of the AmSouth Funds' board of trustees, J. David Huber ("Huber" or "Respondent"). Acting through Huber and others, BISYS entered into a 1999 side agreement with AmSouth pursuant to which BISYS was to rebate a portion of its administration fee to the fund advisers in exchange for their promise to continue recommending BISYS as an administrator to the funds' boards of trustees. Following execution of the side agreement, BISYS paid for marketing expenses incurred by the advisers to promote the funds. Occasionally, the fund adviser also used the money dedicated by BISYS to pay expenses unrelated to marketing. Huber executed the 1999 side agreement with AmSouth, on behalf of BISYS. Huber, however, did not disclose either the existence of the 1999 side agreement or its terms to the boards of trustees or shareholders for the AmSouth mutual funds.

As a result, Huber willfully aided and abetted and caused AmSouth's violations of Sections 206(1) and 206(2) of the Advisers Act.

A. RESPONDENT

1. J. David Huber, 62, resides in Florida. From 1996 to March 1999, Huber was the president of BISYS Fund Services; and from April 1999 to June 2005, he was its managing director. As managing director, he maintained his close relationship with a number of BISYS' major clients, including AmSouth. From 1988 to 2005, Huber was a trustee to the AmSouth Funds, and from approximately 1999 through 2005, he was also the chairman of its board of trustees. Huber held Series 7, 26, and 63 licenses from 1987 or 1988 through between 2001 and 2003. Huber became a part-time BISYS employee in 2000 and formally retired in 2005.

B. OTHER RELEVANT ENTITIES

2. During the relevant period, AmSouth was based in Birmingham, Alabama. AmSouth Bank was a subsidiary of AmSouth Bancorporation, and was an unregistered investment adviser that served as the investment adviser to the AmSouth Funds from October 1, 1987, to May 11, 2001. AmSouth Bank was succeeded as adviser by its wholly-owned subsidiary, AmSouth

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.

Investment Management Company, LLC (“AIMCO”), a registered investment adviser, on May 12, 2001. On October 1, 2003, AmSouth Asset Management, Inc. (“AAMI”) succeeded AIMCO as adviser to the Funds. In 2005, the assets of the AmSouth Funds were merged into, or otherwise became part of, another mutual fund family which is not managed or advised by AmSouth or their successors or affiliates.

3. AmSouth Funds was a Massachusetts business trust registered with the Commission as an investment company until September 23, 2005, when AmSouth Funds was merged into another fund complex, the Pioneer Group, and ceased to exist. AmSouth Funds was an open-end investment company that consisted of 23 individual mutual funds with up to three classes of shares each. AmSouth Funds had a board of trustees consisting of two interested and six independent trustees.²

4. BISYS Fund Services, Inc. was a Columbus, Ohio-based division of BISYS Investment Services, a wholly-owned subsidiary of The BISYS Group, Inc., a publicly-traded Delaware corporation with its principal executive offices in Roseland, New Jersey. BISYS served as administrator for approximately 50 mutual fund families with total net assets under management of \$275 billion.³ On or about August 1, 2007, Citigroup acquired the BISYS Group, including its mutual fund administrative operations.

² On September 23, 2008, the Commission instituted public administrative and cease-and-desist proceedings against AmSouth Bank, N.A. and AmSouth Asset Management, Inc., charging AmSouth Asset Management with willfully violating Sections 206(1) and 206(2) of the Advisers Act, and AmSouth Bank and AmSouth Asset Management with willfully violating Section 34(b) of the Investment Company Act and with willfully aiding and abetting and causing violations of Section 12(b) of the Investment Company Act, and Rule 12b-1 thereunder and accepted the settlement offer from AmSouth, requiring AmSouth Asset Management to 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 requiring AmSouth Bank and AmSouth Asset Management to cease and desist from committing or causing any violations and any future violations of Sections 12(b) and 34(b) of the Investment Company Act, and Rule 12b-1 thereunder, and to pay disgorgement of \$7,789,282 plus prejudgment interest of \$2,198,952.81 and a civil penalty of \$1,500,000.00, and to distribute the Fair Fund. In the Matter of AmSouth Bank, N.A. (now known as Regions Bank), and AmSouth Asset Management, Inc. (now known as Morgan Asset Management), Investment Advisers Act of 1940 Release No. 2784A, Investment Company Act of 1940 Release No. 28387A (September 23, 2008).

³ On September 26, 2006, the Commission instituted a settled administrative and cease-and-desist proceeding against BISYS Fund Services, Inc., arising from its undisclosed marketing arrangements with AmSouth and 26 other mutual fund advisers. In the Matter of BISYS Fund Services, Inc., Investment Advisers Act of 1940 Release No. 2554, Investment Company Act of 1940 Release No. 27500 (September 26, 2006). BISYS agreed to the issuance by the Commission of a cease-and-desist order prohibiting it 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). BISYS also was ordered to pay

C. GENESIS OF FUND ADMINISTRATOR MARKETING ARRANGEMENTS

5. BISYS provided numerous administration services to mutual fund families. By contract, BISYS was required to provide services, including preparing offering documents such as prospectuses and SAIs, compliance reports, and shareholder reports. In addition, BISYS made its employees available to serve as officers of the mutual funds it administered and assisted in the preparation of materials for fund directors. BISYS also provided distribution services, as well as fund accounting and transfer agency services.

6. BISYS' third-party administration business grew as banks expanded their product line to include proprietary mutual funds within the then-current banking law regulatory environment. Notably, the Glass-Steagall Act prevented banks or their affiliates from serving as an underwriter or a distributor to mutual funds they created and sponsored. BISYS and other administrators stepped in to assume these roles for bank-sponsored funds in exchange for being retained as administrator, fund accountant and/or transfer agent. 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." Those marketing budgets began at the creation of the particular bank-sponsored funds.

7. The marketing arrangements generally worked as follows. First, BISYS, in addition to entering into an administration contract with the adviser, also entered into an undisclosed side agreement pursuant to which the administration fee would be split between BISYS and the adviser. These side agreements were not disclosed to the respective mutual funds' boards or shareholders. After entering into the side agreements, the advisers then recommended to the mutual fund boards that the funds enter into administration and other service agreements with BISYS.

8. The administration agreements provided that BISYS would receive an administration fee. Under the marketing arrangement, a substantial portion of the administration fee was allocated to marketing the mutual funds (e.g., wholesaler costs, website design, advertising, and training) pursuant to the undisclosed side agreement between BISYS and the adviser. The advisers effectively determined what expenses would be covered by the marketing budget. Although BISYS paid the marketing expenses directly or by reimbursing the fund or its adviser, BISYS rarely rejected reimbursement for a marketing expense.

disgorgement of \$9,698,835 plus prejudgment interest of \$1,703,981.66 and a civil penalty of \$10,000,000 which monies were included in a Fair Fund for distribution to the victims of BISYS' violations, and it agreed to retain an independent distribution consultant to distribute the Fair Fund and to retain an independent consultant to review and report on its compliance with certain relevant requirements under the Investment Company Act and Advisers Act.

D. HUBER'S ROLE IN THE AMSOUTH MARKETING ARRANGEMENTS

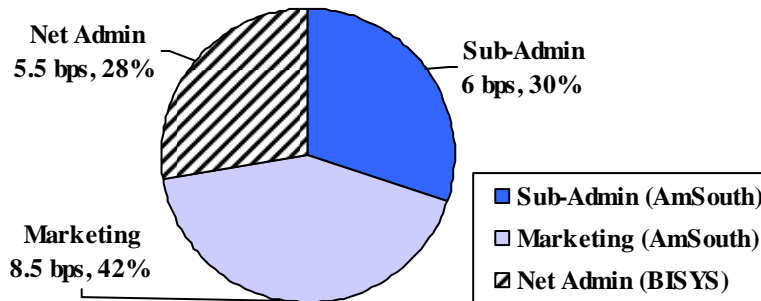
9. In November or December 1998, Huber received a legal memorandum from outside counsel discussing a number of hypothetical situations concerning marketing arrangements. The memorandum recommended that the Administrator disclose marketing arrangements to fund shareholders and trustees in circumstances similar to those described below. Huber signed the 1999 AmSouth side letter and the 1999 administration and sub-administration agreements while he sat on the board of trustees as chairman, but did not disclose the 1999 side letter to the independent trustees or to shareholders.

10. Since the inception of the AmSouth Funds in 1988, BISYS or its predecessor company had an agreement with AmSouth to provide marketing support. From 1988 through October 1999, the agreement was in oral form; from 1999 through 2004, it was in written form. The independent trustees were only generally aware that BISYS provided marketing assistance with respect to the AmSouth Funds from its administration or other service fees. However, the independent trustees were not told specifically how much was spent for marketing or how those monies were spent. At board meetings, BISYS employees stated that over the past year, marketing expenses from BISYS' "bona fide profits" had not exceeded 25% of their fees from the AmSouth Funds.

11. In 1999, BISYS executives negotiated the first written side agreement with AmSouth. In October 1999, Huber signed a side agreement pursuant to which BISYS agreed to pay a specific amount of its administration fee to AmSouth for marketing and sub-administration. In exchange for agreeing to pay a specific amount of its administration fee to AmSouth, AmSouth agreed to recommend to the AmSouth Funds' trustees that they enter into a contract extension with BISYS to provide administration services. The side letter was so critical to AmSouth that an AmSouth officer told Huber that the side letter was a "deal breaker" and that if BISYS "won't do it," one of its competitors will. The AmSouth officer also told Huber that if BISYS did not sign the 1999 side agreement, AmSouth "would not be prepared to recommend to the board our continued, BISYS['] continued involvement with the [AmSouth] Funds." Huber, as managing director of BISYS Fund Services, approved and signed the side letter "Agreed and Accepted, BISYS Fund Services." At the time, Huber was also chairman of the AmSouth Funds.

12. In the October 1999 side letter, BISYS and AmSouth agreed to a stated 20 bps fee for administration and fund accounting services, and also agreed that AmSouth would receive part of that fee, between 5 bps and 6 bps, for providing sub-administration services to the AmSouth Funds. Also from that 20 bps fee, BISYS agreed to pay AmSouth \$200,000 per year for dedicated marketing personnel and accrue between 8.5 bps and 12.5 bps (less any waivers) for AmSouth to use for marketing. For assets under management up to \$2 billion, for example, administration fees were divided as follows:

Breakdown of 20 bps Administration Fee
(up to \$2b assets under management)



The 1999 side letter, therefore, essentially provided that the soon-to-be entered administration contract for 20 bps would be split two ways: one-fourth to BISYS, and three-fourths diverted back to AmSouth (sub-administration and marketing payments).

13. The 1999 side letter stated that “fund agreements will be amended and restated to reflect the terms set forth in this letter.” The side letter continued:

If the information and the fee arrangements outlined in this letter are consistent with your understanding, please sign and date one of the original letters and return it to me. The other original may be retained for your records. Our next step will be to get you copies of the new agreements for your review. Once reviewed by [AmSouth], we will also need to review the agreements with fund counsel and ultimately present the new agreements to the [AmSouth] Mutual Funds Board of Trustees for approval. Obviously, while this letter represents our mutual understanding, these terms will become binding upon the execution of the new, definitive fund agreements, which we will finalize over the next thirty days.

The fund agreements were not amended to reflect the specific terms of the side letter. Accordingly, other than with respect to the overall fee (20 bps) and term (two years), the provisions relating to the marketing budget were not included in the subsequently executed administration agreements that were approved by the AmSouth Funds’ trustees.

14. Shortly after entering into the side agreement with AmSouth, Huber executed the administration agreement on behalf of the AmSouth Funds as its chairman, and the sub-administration agreement on behalf of a BISYS subsidiary as its executive vice president, knowing that the administration and sub-administration agreements did not contain the provisions relating to the marketing budget. Huber then presided over the board of trustees meeting during which there was a discussion and vote on renewing BISYS’ administration contract with the funds for a two-year term. Huber did not disclose to the independent trustees that he had recently on behalf of BISYS signed the 1999 side agreement between BISYS and AmSouth.

15. Huber became aware of a proposed 2000 side letter from his successor as president of BISYS. The new president of BISYS called Huber and said that AmSouth asked that

he sign the 2000 side letter. Huber responded that he did not know anything specific about the 2000 side letter. But, Huber stated that AmSouth demanded that he sign a side letter in 1999. Huber further said that the new president of BISYS should have lawyers look at the 2000 side letter. Huber concluded, but “I think it’s a deal breaker.”

16. Huber then received drafts of the 2000 side agreement with AmSouth. The 2000 side agreement was similar to the 1999 one, including the language distinguishing the administration and other service agreements that would be presented to the trustees and the side agreement that would be signed with one copy staying with AmSouth and the other going to BISYS. Further, Huber was copied on an email from an independent trustee asking for a breakdown of the fees for administration and other services in the contract proposals. Despite receiving a draft side agreement four days earlier that outlined the marketing arrangement -- a significant portion of the BISYS fees would be set aside for marketing and the entire fund accounting fee, until \$1 million was accumulated would be given to BISYS, not to pay for fund accounting services, but rather to satisfy the marketing budget deficit -- Huber did not correct the disclosure to the independent trustees that the administration fee would be 20 bps and the fund accounting fee would be 2 bps. The side agreement preceded a board meeting, chaired by Huber, in which there was a discussion of a renewal of BISYS’ administration contract for a five-year term. Huber did not disclose that he was aware of a draft of the 2000 side agreement. The marketing arrangement with AmSouth ended on October 1, 2004.

E. VIOLATIONS

17. As a result of the conduct described above, Huber willfully aided and abetted and caused AmSouth’s violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent J. David Huber’s Offer.

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

A. Respondent J. David Huber cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$13,800 and prejudgment interest of \$4,200, for a total amount of \$18,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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, Stop 0-3, Alexandria, VA

22312; and (D) submitted under cover letter that identifies J. David Huber 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.

By the Commission.

Elizabeth M. Murphy
Secretary