

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5820 / August 13, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20461**

**In the Matter of**

**ISC ADVISORS, INC.,**

**Respondent**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTIONS 203(e) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against ISC Advisors, Inc. (“ISCA” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, ISCA 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, ISCA consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and ISCA’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> 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.

## **Summary**

1. These proceedings arise out of ISCA's breach of fiduciary duty to its advisory clients in connection with: (a) ISCA's mutual fund share class selection practices and the receipt of financial benefits for advising clients to purchase and hold mutual fund share classes that paid fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees"); and (b) receipt of financial benefits in the form of revenue sharing generated from advisory clients' assets held in cash or cash sweep programs. Since at least January 1, 2014, ISCA recommended that its clients purchase and hold mutual fund share classes that paid ISCA's affiliated broker-dealer, Institutional Securities Corporation (ISCA's "Affiliated Broker"), 12b-1 fees, including when lower-cost share classes of the same funds were available to clients. In addition, since at least January 1, 2014, ISCA's Affiliated Broker received revenue sharing from its clearing broker for ISCA's client assets in uninvested cash (whether held in money market mutual funds, a bank insured deposit program or otherwise). ISCA failed to provide full and fair disclosure of these payments and the resulting conflicts of interest. ISCA also violated its duty to seek best execution for certain transactions by selecting or recommending certain mutual fund share classes when share classes of the same funds were available to its clients that presented a more favorable value for these clients at the time of the transactions. In addition, ISCA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices and revenue sharing from its clearing broker on clients' assets held in cash or cash sweep programs, and the disclosure of these practices and payments and the resulting conflicts of interest. ISCA, although eligible to do so, did not self-report to the Commission pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative.<sup>2</sup> ISCA has advised the Commission staff that after the commencement of the Commission's investigation, it reimbursed approximately \$331,000 in 12b-1 fees, plus interest, to clients, began rebating 12b-1 fees to client accounts, and converted client investments to the available share class most favorable to ISCA's clients.

## **Respondent**

2. Respondent ISC Advisors, Inc., a wholly-owned subsidiary of ISC Group, Inc., is incorporated in Texas with headquarters in Dallas, Texas. ISCA has been registered with the Commission as an investment adviser since March 20, 2013. In its Form ADV dated March 31, 2021, ISCA reported that it had approximately \$1.2 billion in regulatory assets under management. ISCA provides advisory services on both a discretionary and non-discretionary basis through investment adviser representatives ("IARs"), most of whom are also registered representatives of ISCA's Affiliated Broker.

## **Other Relevant Entity**

3. Institutional Securities Corporation, ISCA's Affiliated Broker, is a Texas corporation with its principal place of business in Dallas, Texas. ISCA's Affiliated Broker, which also is a wholly-owned subsidiary of ISC Group, Inc., has been registered with the

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<sup>2</sup> See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Share Class Selection Disclosure Initiative, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

Commission as a broker-dealer since October 28, 1999. At all relevant times, ISCA's Affiliated Broker acted as an introducing broker-dealer for ISCA's advisory clients.

### **12b-1 Fees (Share Class Selection)**

4. Mutual funds typically offer investors different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

5. Some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund's total annual fund operating expenses, vary by share class, but often range from 25 to 100 basis points (equal to 0.25% to 1.00%). These fees are deducted from the mutual fund's assets on an ongoing basis and generally are paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

6. Many mutual funds also offer lower-cost share classes that do not pay 12b-1 fees (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).<sup>3</sup> An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

7. Since at least January 1, 2014, ISCA's IARs recommended that its clients purchase or hold mutual fund share classes that charged 12b-1 fees, including when lower-cost share classes of those same funds were available to those clients. As a result, ISCA financially benefitted through ISCA's Affiliated Broker's receipt of 12b-1 fees. ISCA's Affiliated Broker passed on a portion of these 12b-1 fees to ISCA's IARs (in their capacity as the Affiliated Broker's registered representatives). As an investment adviser, ISCA was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and/or its associated persons and its clients that could affect the advisory relationship and how those conflicts could affect the advice ISCA provided its clients. To meet this fiduciary obligation, ISCA was required to provide its advisory clients with full and fair disclosure that is sufficiently specific so that they could understand the conflicts of interest concerning ISCA's advice about investing in mutual funds and could have an informed basis on which they could consent to or reject the conflicts.

8. In its Form ADV Part 2A brochures in effect during the relevant period, ISCA disclosed that mutual funds charge fees and expenses that are described in each fund's prospectus, and that "[i]f the advisor representative recommends mutual funds that...pay 12(b)-1 fees, and receives this compensation in their capacity as a registered representative of ISC in addition to a separate advisory fee, a conflict of interest exists." ISCA further disclosed that it

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<sup>3</sup> Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry. Examples may, though not always, include "Advisor," "Class F2," "Class Y" and "Class Z" shares. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees.

prohibited its IARs from receiving front-end or back-end sales charges, and that this prohibition “against charging both an advisory fee and earning commissions (other than 12b-1 fees) mitigates the conflict of interest noted above.” The brochure also stated that ISC and its supervised persons “may accept compensation from the sale of securities or other investment products including asset-based sales charges or charges for service fees from the sale of mutual funds...” In its March 2016 brochure, ISCA added that affiliates of ISCA “may receive other compensation, including asset based sales charges, services fees, revenue sharing payments, 12b-1 fees...”

9. ISCA did not disclose, in its Form ADV Part 2A brochure or otherwise, all material facts regarding the conflict of interest that arose when it recommended to advisory clients a share class that would generate 12b-1 fee revenue for ISCA’s Affiliated Broker and IARs (in their capacity as registered representatives for ISCA’s Affiliated Broker). Among other things, ISCA failed to disclose that it would select 12b-1 fee paying share classes even when share classes with lower expense ratios were available to clients.

10. In July 2019, ISCA’s Affiliated Broker directed the registered broker-dealer that it used to clear transactions in ISCA’s client accounts (“Clearing Broker”), to begin rebating the 12b-1 fees to ISCA’s advisory clients. On August 1, 2019, the Clearing Broker began doing so, and ISCA also began converting its clients to a lower-cost mutual fund share class. In addition, ISCA advised the Commission staff that in April 2020, it reimbursed approximately \$331,000 in 12b-1 fees paid on advisory accounts for part of the relevant period, plus interest, to clients.

#### **Uninvested Cash Revenue Sharing Payments**

11. Since at least January 1, 2014, ISCA client accounts, other than workplace retirement plan accounts, have been held in custody with the Clearing Broker.

12. The Clearing Broker offered a “Sweep Program” through which ISCA clients’ uninvested cash would be automatically transferred to either: (i) an account at a bank whose deposits are FDIC insured, or (ii) a money market fund product. If no sweep account option was selected, the cash sat uninvested in the account at the Clearing Broker. For all three of these cash options, the Clearing Broker agreed to pay ISCA’s Affiliated Broker 25 basis points (or 0.25%) on ISCA’s clients’ uninvested cash.

13. Since at least January 1, 2014, pursuant to an arrangement between the Clearing Broker and ISCA’s Affiliated Broker, the Clearing Broker made revenue sharing payments to ISCA’s Affiliated Broker that were based on the amount of aggregate assets that ISCA’s clients had in cash or cash sweep programs.

14. During the relevant period, ISCA did not provide full and fair disclosure regarding the revenue its Affiliated Broker received from the Clearing Broker for client assets in the three cash options, or the related conflicts of interest that arrangement created. For example, this arrangement created an incentive for ISCA to leave client cash in one of these three cash options over other investments. On or about December 31, 2019, ISCA’s Affiliated Broker stopped receiving revenue sharing from the Clearing Broker based on ISCA’s advisory clients’ assets in cash or cash sweep programs.

### **Best Execution Failures**

15. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.<sup>4</sup>

16. By causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances at the time of the transactions, ISCA violated its duty to seek best execution for those transactions.

### **Compliance Deficiencies**

17. During the relevant periods, ISCA failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with (1) disclosure of conflicts of interest presented by its mutual fund share selection practices, (2) making recommendations of mutual fund share classes that were in the best interest of its advisory clients, or (3) disclosure of ISC's receipt of revenue based on clients' uninvested cash and the resulting conflicts of interest.

### **Violations**

18. As a result of the conduct described above, ISCA willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

19. As a result of the conduct described above, ISCA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Disgorgement**

20. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and does not exceed the net profits from the violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

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<sup>4</sup> See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

## Undertakings

21. ISCA has undertaken to:
- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection, 12b-1 fees, and revenue sharing.
  - b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost share class and move clients as necessary.
  - c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, ISCA's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding mutual fund share class selection, 12b-1 fees, and revenue sharing, and in connection with making recommendations of mutual fund share classes that are in the best interest of its advisory clients.
  - d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices discussed above (hereinafter, "affected investors") of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
  - e. Within 45 days of the entry of this Order, certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and ISCA agrees to provide such evidence. The certification and supporting material shall be submitted to Frank Goodrich, Senior Counsel, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.
  - f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

## IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. ISCA cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder;

B. ISCA is censured;

C. ISCA shall pay disgorgement and prejudgment interest, and a civil monetary penalty totaling \$716,345.29, as follows:

(i) ISCA shall pay disgorgement of \$438,018.45 and prejudgment interest of \$98,326.84 consistent with the provisions of this Subsection C and subject to the offset provisions of Subsection C (ix) below.

(ii) ISCA shall pay a civil monetary penalty in the amount of \$180,000 consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty, disgorgement, and prejudgment interest described above for distribution to affected investors. 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, ISCA agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of ISCA's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, ISCA agrees that it shall, within thirty (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 Commission. 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 ISCA 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.

(iv) Within ten (10) days of the entry of this Order, ISCA shall deposit the full amount of the disgorgement, prejudgment interest, and the civil money penalty (the "Fair Fund"), less monies already distributed to investors, into an escrow account at a financial institution not unacceptable to the Commission staff and ISCA shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 - 17 C.F.R. § 201.600.

(v) ISCA shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by ISCA and shall not be paid out of the Fair Fund.

(vi) ISCA shall distribute from the Fair Fund to each affected investor an amount representing: (a) the financial harm during each relevant period by the practices discussed above, and (b) reasonable interest paid on such fees, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which ISC or ISCA, or any of their past or present officers or directors have a financial interest.

(vii) ISCA shall, within ninety (90) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, ISCA shall make itself available, and shall require any third-parties or professionals retained by ISCA to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. ISCA shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to ISCA's proposed Calculation or any of its information or supporting documentation, ISCA shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that ISCA is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) ISCA shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, (3) the application of a *de minimis* threshold, and (4) the amount of reasonable interest paid.

(ix) ISCA shall complete the disbursement of all amounts payable to affected investors within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. The amount ISCA paid to affected investors in reimbursed 12b-1 fees and prejudgment interest in April 2020 up until the lapse of 90 days



following the date of staff's acceptance of the Payment File for 12b-1 fees ISCA received during January 1, 2014 through July 31, 2019 will dollar for dollar offset the disgorgement and prejudgment interest payable to the Commission pursuant to this Subsection C., subject to approval by the Commission staff. ISCA shall notify the Commission staff of the date(s) and the amount paid in the initial distribution.

(x) If ISCA is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond ISCA's control, ISCA shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of the funds is complete and before the final accounting provided for in Paragraph (xii) below is submitted to the Commission staff. Payment must be made in one of the following ways:

- (a) ISCA may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (b) ISCA 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
- (c) ISCA 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 ISC Advisors, Inc. as the 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 Frank Goodrich, Senior Counsel, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102, or such other address as the Commission staff may provide.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. ISCA shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax

Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by ISCA and shall not be paid out of the Fair Fund.

(xii) Within 150 days after ISCA completes the disbursement of all amounts payable to the affected investors, ISCA shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. ISCA shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest and post-order interest, if applicable; (2) the date of each payment; (3) the check number or other identifier of money transferred to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that ISCA has made payments from the Fair Fund to affected investors in accordance with the Payment File approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies ISC Advisors, Inc. as the Respondent in these proceedings and the file number of these proceedings to Frank Goodrich, Senior Counsel, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102, or such other address as the Commission staff may provide. ISCA shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon request, and ISCA shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. ISCA shall comply with the undertakings enumerated in Section III, paragraphs 21.a through 21.e above.

By the Commission.

Vanessa A. Countryman  
Secretary