

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76079 / October 5, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4215 / October 5, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31859 / October 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16883

In the Matter of

**ARTHUR F. JACOB, CPA
and INNOVATIVE
BUSINESS SOLUTIONS,
LLC**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS
203(e), 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940
AND NOTICE OF HEARING**

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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 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 Respondent, Innovative Business Solutions, LLC (“IBS”) and Respondent, Arthur F. Jacob (“Jacob”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. These proceedings involve violations of the anti-fraud provisions of the federal securities laws by Respondent Arthur F. Jacob and his company, Respondent Innovative Business Solutions, LLC, unregistered investment advisers to about 30 client

households with approximately \$18 million under management.

2. From approximately mid-2009 through at least July 2014, Jacob and IBS, which Jacob owns and controls, engaged in a fraudulent scheme involving material misrepresentations and omissions and other deceptive devices and practices. Jacob engaged in this scheme in order to obtain and retain investment advisory clients and thereby collect advisory fees.

3. For at least five years, Jacob (alone and acting through IBS) routinely made false statements and omissions to current clients, prospective clients, and others, where he:

- concealed his 2003 disbarment by the State of Maryland for misappropriating client funds, making false statements under oath, making numerous false statements to Bar Counsel, filing false tax returns on behalf of a client, willfully violating a court order, and charging unreasonable fees, as well as his 2005 suspension from practicing or appearing before the Internal Revenue Service (“IRS”);
- misstated to clients the risks and profitability of their investments, including in investment newsletters Jacob drafted and distributed;
- falsely informed clients that he was not required to register as an investment adviser and failed to disclose that in fact, he and IBS were required to be registered as investment advisers with several states; and
- provided false information about the advisory services they provided in order to retain trading authority in clients’ accounts.

4. Jacob’s and IBS’s false statements and failure to disclose material information was a breach of their duties as investment advisers to the clients.

5. As a result of their scheme, Jacob and IBS collected over \$517,000 in investment advisory fees from their clients.

6. Jacob asserted his Fifth Amendment privilege against self-incrimination in testimony taken by the Commission during the Division’s investigation of this matter.

B. RESPONDENTS

7. **Arthur F. Jacob**, age 56, is currently a resident of Orlando, Florida. He resided in Big Fork, Montana from September 2008 until February 2013, and in Scottsdale, Arizona from February 2013 until March 2014. He is a CPA licensed in the State of Maryland, and a co-owner (with his wife) of Innovative Business Solutions, LLC. Jacob was licensed as an attorney by the State of Maryland until he was disbarred

in 2003. In 2005, Jacob was also suspended from practicing before the Internal Revenue Service. Jacob has never been registered as an investment adviser with the Commission or any State.

8. **Innovative Business Solutions, LLC**, is a company co-owned by Jacob and his wife, incorporated in 2002 in Maryland to provide accounting and tax services to clients. Jacob and his wife have operated IBS in Maryland, Montana, Arizona, and now in Florida. By mid-2009, Jacob also conducted an investment advisory business through IBS. IBS was never registered with the Commission or any state in any capacity.

C. **FACTS**

9. Jacob's multi-year fraudulent scheme involved numerous material misstatements and omissions and various deceptive devices and practices. Jacob engaged in the scheme in order to obtain and retain clients, and to collect investment advisory fees.

Jacob and IBS Were Investment Advisers and Are Subject To the Anti-Fraud Provisions of the Investment Advisers Act of 1940.

10. From at least mid-2009 through at least July 2014 (the "relevant period"), Jacob and IBS acted as investment advisers, providing investment advice and advisory services to approximately 30 client households.

11. During the relevant period, Jacob and IBS conducted their investment advisory business in Montana and had more than 5 investment advisory clients in each of the states of Maryland and Georgia.

12. Jacob and IBS managed their clients' securities accounts, including investment retirement accounts—such as defined benefit plans, 401(k) plans, profit sharing plans, and retirement income plans. Many of the clients maintained multiple securities accounts for themselves, family members, and businesses that Jacob and IBS managed. The accounts had a total value of approximately \$18 million.

13. From mid-2009 to late 2011, Jacob and his clients held accounts at a Montana branch of a large firm which is dually registered with the Commission as both an investment adviser and a broker-dealer ("Firm One"). At Firm One, Jacob's clients signed "Durable Power of Attorney / Security Account Limited Discretionary Authorization" forms which gave Jacob the ability to buy, sell, and trade in the client accounts.

14. In early 2012, Jacob moved his clients' accounts to a Florida branch office of a different large, dually registered firm ("Firm Two"), and later to a third firm. The latter two firms each ultimately terminated its relationship with Jacob. At Firm Two, Jacob's clients similarly signed "Third Party Authorization and Indemnity" forms giving Firm Two authorization to accept trade instructions from Jacob.

15. At Firm One and Firm Two, financial advisers or brokers were assigned to Jacob's clients' accounts and sometimes discussed with Jacob possible securities transactions. Jacob, however, was the only one to have discretionary trading authorization over the accounts, other than the client, and regularly provided trade instructions to the firms where the accounts were held. Jacob made the ultimate investment decisions for the clients' accounts, including the specific securities to be purchased or sold, the timing and amounts of the trades, the prices at which to buy or sell securities, the investment strategy to be employed and the asset allocation.

16. Jacob told a client who had recently terminated Jacob's investment advisory services that he and IBS had been responsible for the client's previous trading, not anyone at Firm One. Specifically, Jacob stated, "[D]on't come back to me and gripe when I turn out to be right and/or you can't react when a trade, etc. needs to be executed. Trust me, [Firm One] didn't so [*sic*] that either and won't in the future – it was us [Jacob and IBS] doing those profitable trades and us making the decisions [regarding the client's investments]—[Firm One] initiated nothing."

17. On a number of occasions, Jacob insisted on asset allocations and securities transactions that differed from the recommendations of the financial advisers assigned to the accounts at Firm One and transactions that differed from the recommendations of the broker assigned to the accounts at Firm Two. For instance, in December 2009, he wrote to two financial advisers at Firm One—copying their supervisor—after they had recommended against leaving a large percentage of the clients' accounts in cash. Jacob admonished that he had represented the clients at issue, "as an attorney, certified public accountant, and adviser for numerous years. . . ." He later noted that he "resent[ed] the inference [his] investment philosophy, strategy, or asset allocation [was] inappropriate."

18. Jacob had direct access to his clients' account statements. He kept track of the profits and losses in clients' accounts and provided the clients with analyses about their investment portfolios. For instance, in March 2009, Jacob provided an analysis to one client in which he explained the current market value of the invested assets, the change in the market value of those assets, and projected assets over a ten-year period. He also provided these types of analyses to clients throughout the relevant time period.

19. Jacob referred to himself as an investment adviser and described the services he provided as managing investment accounts in communications with clients, prospective clients and financial institutions. For instance, in a December 28, 2011 email to a law firm in reference to one of his clients' accounts, Jacob stated, "I am the Investment Advisor to that account."

20. In addition, on July 20, 2010, Jacob emailed a prospective client and stated, "Investment Management Services are separate from the on-going monthly accounting/tax/consulting fee. . . . We are on-line with [Firm One] and actively manage the investment accounts, direct trading activity, establish targets, and supply monthly and quarterly, readable, reports and analyses."

21. In another example, in late 2011, Jacob sent multiple emails to Firm Two, copying his clients, in which he indicated that in order to open the clients' accounts at Firm Two he would require "Internet access to the accounts . . . as the Investment Adviser . . . [and] Authorization to serve as the Investment Adviser for these accounts such that all investment decisions are made with unanimous consent of you and I."

22. Throughout the relevant period Jacob and IBS issued invoices for their investment advisory services which were separate and distinct from invoices they issued to clients for accounting, tax, and other consulting services.

23. The investment advisory services Jacob and IBS provided were not solely incidental to the accounting and tax services IBS and Jacob provided during the relevant period.

24. Jacob also routinely issued to clients email newsletters that discussed his investment strategies, his outlook on market conditions, and the purported profitability of clients' portfolios; and Jacob advised his clients where and when to move the investment accounts that Jacob managed.

25. The investment advisory fees Jacob and IBS charged usually consisted of a "performance fee" which was typically discounted from 2% to 1% of the managed portfolio, plus \$750 per quarter for a "base/accounting fee" or a "discount" fee based on performance of the portfolio.

26. As investment advisers, Jacob and IBS owed to their clients an affirmative duty of utmost good faith, and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading their clients.

27. During the relevant period, Jacob and IBS collected more than \$517,000 for providing investment advisory services. Jacob and IBS also collected in excess of \$2 million for providing unrelated accounting, tax and consulting services to the same clients.

Jacob Concealed and Misrepresented His Disciplinary History and Touted His Credentials as an Attorney in Furtherance of His Scheme.

28. Jacob was an attorney licensed to practice law in the State of Maryland from December 1989 until July 2003, when he was disbarred. In connection with his disbarment, the Circuit Court of Baltimore County, Maryland held a five-day evidentiary hearing and issued a 32-page decision finding that Jacob had violated multiple rules of professional conduct. Specifically, the Court found that Jacob misappropriated at least \$30,000 in client funds, charged excessive fees, made numerous false statements under oath, knowingly prepared and filed false tax returns on behalf of a client, and willfully violated a court order.

29. Faced with the Court's detailed factual and legal findings, and in lieu of an appeal, Jacob signed an affidavit acknowledging the Court's findings and consenting to

his disbarment.

30. During the relevant period, despite his disbarment, Jacob described himself as an attorney when extolling his abilities as an investment adviser to several clients and prospective clients; and he did so without disclosing his disbarment or the misconduct leading to it.

31. For example, on April 30, 2009, Jacob touted his qualifications in an email to a retired doctor who later became an advisory client of IBS and stated, “In my case, I know the results when I ‘buy’ and not when I am forced to ‘sell’—which is what happens when a defense attorney trained as an auditor manages money—I ask no question I don’t already know the answer to and I’ve hedged the bet on both sides of the balance sheet.” Jacob forwarded this email to two other clients.

32. Also, on October 3, 2009, Jacob described himself to a prospective client as having “20-years experience as a tax/defense lawyer,” and as rendering advice in the areas of “tax/financial/transition/estate planning, asset protection, and legal matters” to clients. On October 13, 2009, Jacob followed-up with the prospective client and sent an email describing the benefits of his services as follows: “Available 24/7, having investment advisers who understand, and work with the tax, pension, and legal issues and having a CPA legal consultant (who can also serve as the [third party agent]) who knows the investment world is a stellar advantage.”

33. In addition, on March 31, 2013, Jacob sent a solicitation email in which he wrote, “By way of introduction, I am both [*sic*] a Certified Public Accountant, an Attorney-at-Law (now retired and non-practicing), and an Accredited Tax Adviser. While I must make the distinction between the public accounting practice and the performance of legal services, on a day-to-day basis there’s no real difference.”

34. On at least one occasion, when specifically confronted about his reasons for leaving the practice of law, Jacob lied. In an August 2013 email to his clients, following a report that he had had been disbarred, Jacob wrote:

Yes, I quit practicing law. In mid-2002, I decided to no longer actively practice; it was becoming too time consuming, too expensive to maintain a dual-practice, and it was not enjoyable. My skills were better allocated to the financial, accounting, and tax areas, where [my wife] and I shined. In 2004, knowing I would be departing Maryland and never doing legal work there again, I resigned from the Maryland Bar – it was knowing and voluntary, it was my decision, and under Maryland Law it’s called a “Consent to Disbarment.” In short, at that time, I wanted no part of the b.s. of being a lawyer.

35. Jacob failed to disclose to clients that a court found he had engaged in

sustained misconduct, during his performance of client services that are strikingly similar to those he provided for investment advisory clients during the relevant period. As a fiduciary and as the manager of their retirement assets, such information regarding prior misconduct clearly would have been material to Jacob and IBS's clients and prospective clients.

36. In addition, Jacob provided tax advice to his investment advisory clients without disclosing to them that in March 2005, he was suspended indefinitely from practicing before the IRS based on his prior disbarment from the Maryland bar. Under the IRS suspension, Jacob was prohibited from, among other things, participating in presentations to the IRS relating to a taxpayer's rights, privileges or liabilities, including preparing documents and communicating with the IRS on behalf of a taxpayer.¹ Jacob failed to disclose this suspension to his advisory clients. Indeed, in violation of the suspension order, Jacob continued to engage in activities in which he represented advisory clients before the IRS.

Jacob Misrepresented And Failed To Disclose The Risks Associated With Both The Specific Securities He Purchased For His Clients' Accounts And His Overall Investment Strategy.

37. In approximately May 2010, after discussing with the financial advisers at Firm One, Jacob decided to purchase shares of Proshares Short S&P500 ("SH") and Proshares Short Russell2000 ("RWM") in over 25 of his clients' accounts. SH and RWM are single-inverse Exchange Traded Funds ("ETF"). SH seeks daily investment results that correspond to the inverse of the daily performance of the S&P 500 index. RWM seeks daily investment results that correspond to the inverse of the daily performance of the Russell 2000 index.

38. Prior to placing the trades in these ETFs, Jacob signed Firm One's "Client Disclosure Notice Regarding Single-Inverse ETFs," with respect to trades placed in his own accounts acknowledging that he understood the risks of holding these ETFs longer than one trading session (typically, one day), including the possible loss of all or a portion of the amount invested, and agreeing that the ETFs were to be purchased only as a hedge against a portfolio's exposure to the same index or benchmark. Jacob, however, failed to disclose to clients the warnings in the Client Disclosure Notice provided to him by Firm One.

39. Instead, Jacob immediately purchased SH and RWM in client accounts for speculation—*i.e.*, not as a hedge—as his clients did not own securities related to the S&P 500 index or the Russell 2000.

40. Jacob had most of his clients hold these positions for years, despite being informed in the Client Disclosure Notice he signed that:

¹ See Treasury Department Circular 230, 31 CFR Section 10.2(a)(4).

- the performance of single-inverse ETFs over periods longer than one day can differ significantly from their reference index or benchmark;
- they are unsuitable for investors who plan to hold them for longer than one trading session unless used as part of a trading or hedging strategy; and
- the risks associated with investing in single-inverse ETFs include the possible loss of all or a portion of the amount invested.

41. When Jacob sold the positions for many of his clients in mid-2013, his clients' investments in these positions had lost nearly 50% of their original purchase price.

42. Similarly, Jacob bought and held long-term another highly volatile exchange-traded product ("ETP") in clients' accounts: the Barclays Bank PLC iPath S&P 500 VIX Short-Term Futures ETN ("VXX"). The pricing supplement to the VXX prospectus explains that VXX was designed to provide exposure to stock market volatility through futures contracts on the CBOE Volatility Index ("VIX"), which do not necessarily track the performance of the VIX and therefore may not benefit from increases in the level of the VIX. It further explains that VXX may be subject to unforeseen volatility. Barclays's investor materials state that VXX is riskier than ordinary unsecured debt securities and involves significant risks, including possible loss of principal.

43. Jacob purchased VXX in clients' accounts in March 2010, and again in the May through July 2010 time period. Contrary to representations made by Jacob in March 2010 about maintaining a short-term strategy with predictable profits, he held the VXX positions in clients' accounts for years, even though the positions steadily declined until they lost almost all of their value.

44. Again, Jacob failed to disclose the risks of VXX to clients. And, investors' losses in VXX totaled more than \$630,000 as of January 2014.

45. On March 23, 2010, in response to a client's expression that he was "a little concerned with this VXX purchase" and noting that "[i]t seems to continue to nosedive," Jacob stated:

It's a long-term play on long-term volatility. On the decline, it drops linearly downward. When it recovers it recovers geometrically upward.

Each of these assertions was false.

46. Jacob was informed that an investment in VXX was speculative. However, Jacob failed to disclose this fact to his clients. Instead, Jacob misrepresented,

from 2011 through 2014, that VXX acted like “an insurance policy” in their portfolios, which would “pay off” if the equities market went down. For example:

- On January 6, 2011, Jacob sent an email to his clients, stating, “[W]e have also ‘insured’ your portfolio from disaster by holding positions in index shorts (i.e., VXX); while that investment has declined substantially, the truth is we hope that insurance never pays off, but like life insurance it’s there to protect you just-in-case.”
- On January 20, 2011, in response to a customer’s complaint that his account had declined \$9,000 in 6 months, Jacob stated:

The VXX is the culprit and remains in the accounts as the ultimate life insurance policy; sit tight for the ride, it will prove to be the right decision in the long-run.... The cash-flow from the options and income-yielding securities is doing well. Stay focused on that and be happy the ultimate insurance [VXX] is in-place.

47. Despite purchasing and holding long-term these high-risk investments (which resulted in significant losses), Jacob repeatedly made false representations to clients regarding the trading strategy he employed in the clients’ accounts and the profitability of the securities held in the clients’ accounts. He repeatedly misrepresented that his trading strategy was safe, involved little or no risk, and produced guaranteed, predictable profits when a number of the investments he purchased and held were high risk and volatile. For example:

- On June 18, 2010, Jacob misrepresented in an email to clients that the purchase of the ETFs discussed above was part of a strategy “so profits can be made on what’s *inevitable* rather than what’s *speculative*.”
- On August 5, 2010, Jacob falsely assured a client that by 2016, his portfolio’s value would increase by a factor of seven or eight by virtue of holding VXX, SH and RWM in his account. Specifically, Jacob stated, “When the ‘market’ crashes, as is inevitable, we have enough VXX, SH, and RWM to take your portfolio up by a factor of 7-8 fold—that’s 7 times what it’s worth right now.”
- On June 6, 2012, Jacob misrepresented to a client,

[W]e shifted the portfolio to [Firm One] with a more active but risk-averse management style (you can afford NO risk), leaving the bulk of the portfolio in cash and only deploying it when gains were assured (i.e., thru high-yield investments, options, and

market orders). During the period of market volatility, your portfolio did well, taking no extraordinary risk.

- On January 30, 2014, Jacob misrepresented to another client,

[T]he portfolio is managed with caution on the upside and minimization of risk on the downside. Despite the crushing economic problems in the world, such a methodology allows us to steadily profit while the market is irrationally reaching new highs, generate income from a fixed-income strategy (which works regardless of market movement), and protect ourselves with calls, insurance, and hedges as things become more unsustainable.

48. Jacob had no reasonable basis to predict the long-term performance of these exchange traded products, which he knew or was reckless in not knowing were risky and speculative and which, if held long-term, would tend to result in losses.

Jacob Made False and Misleading Statements To Clients About the Profitability of His Investment Strategies.

49. In addition, Jacob repeatedly misrepresented that his investment strategy was profitable and minimized the significance of losses – referring to them as “holding losses” – while such losses in the clients’ accounts grew steadily and significantly throughout the relevant period. Jacob knew, was reckless in not knowing, or should have known that his statements were false and misleading because, among other things, he had direct access to his clients’ account statements and kept track of the profits and losses in each of his clients’ accounts. For example:

- On March 15, 2010, Jacob sent an email to all his clients, falsely stating,

[W]e don’t purchase any investment without knowing how, when, and at what profit it will be sold.... One thing is certain – one-hundred-percent of our buy/sell/Call Premium trades have been at a profit and, since embarking on this strategy (and, for many relocating your money out West), no account has lost money.

Notably, as of February 28, 2010, the month-end prior to this email, approximately 20 client households held unrealized losses in accounts.

- On January 27, 2013, Jacob represented to a client, “The investment results are in positive territory, the accounts are yielding a healthy

annual cash-flow, and every sale effected has generated total gains of between 16-28%.” This statement was misleading because, as of December 31, 2012, this client had unrealized losses totaling over \$49,000 in three ETPs held in two accounts with total assets of nearly \$308,000.

- Almost a year later, on January 10, 2014, Jacob similarly told this client, “The investment results are in positive territory, the accounts are yielding a healthy annual cash-flow, and every sale effected has generated profits.” This was misleading in that as of December 31, 2013, this client had unrealized losses in one ETP of about \$33,000 and realized losses of over \$16,000 after the July 25, 2013 sale of the other two ETPs.
- On November 5 and 6, 2013, Jacob again falsely assured clients that:

While we are sitting on several ‘holding [unrealized] losses’, they are income-oriented which tends to decline sharply during times of market upswings. However, our goal therewith is to secure a steady, long-term source of continual new cash-flow, even accepting wide value fluctuations, since there is, literally, nothing to invest in which will directly track the market’s overall, but manipulated, increases.... [B]ecause the holding [unrealized] losses are comprised of long-term holds (e.g., silver, mining, energy, and financials – who’s long term prognosis is solid), we are not very concerned.

Jacob Provided False Information to Firm Two in Order to Purchase Securities in Clients’ Accounts.

50. In 2012, Jacob provided false information to Firm Two, so that he could continue to trade in his clients’ accounts.

51. Shortly after the accounts were transferred from Firm One to Firm Two, Firm Two employees discussed that Jacob may be acting as an unregistered investment adviser and communicated to Jacob that he needed to provide a legal opinion that he was in compliance with each state where the clients were located. Firm Two told Jacob that if he did not provide the legal opinion, Firm Two would not permit Jacob, who had trading authorization on the accounts, to purchase any securities in his clients’ accounts.

52. In July 2012, Jacob provided to Firm Two a letter he drafted, falsely describing the services he and IBS provided. The letter included the following false statements:

- Jacob (and IBS) did not provide investment advice for compensation;

- the investment-related services Jacob and IBS performed were billed on the same basis as fees for all other services;
- Jacob and IBS did not select specific investments;
- Jacob and IBS did not decide the timing of buys and sells;
- Jacob and IBS did not make decisions regarding the general portfolio structure or the specific composition of the investment portfolios;
- Jacob and IBS did not publish an investment newsletter; and,
- Jacob and IBS did not hold themselves out to the public as an investment adviser.

In fact, as described elsewhere herein, Jacob and IBS provided all of these services and held themselves out as investment advisers.

53. Jacob also submitted to Firm Two an attorney opinion letter, which was based on the false assertions he made in the July 2012 letter. Jacob’s counsel stated that, assuming Jacob’s description of the services Jacob and IBS provided to clients was accurate, Jacob did not fit within the definition of “investment adviser.” After Firm Two received the legal opinion, Jacob was permitted to place orders to purchase securities in clients’ accounts and he continued receiving advisory fees for managing the accounts.

Jacob Misrepresented To Clients That He Was Not Required To Register As An Investment Adviser.

54. In an August 14, 2013 email from Jacob to his clients, Jacob falsely claimed that he was not required to register as an investment adviser with any state, despite being required to register as an investment adviser under the laws of Montana, Georgia, and Maryland. Specifically, Jacob stated:

We did NOT have to hold any sort of “securities license” or “registration” to do this. . . . This was well-researched before we embarked on this path in early-2009 and was validated by an independent lawyer. In fact, [Firm Two’s] Legal Compliance Department verified this, in painstaking detail, when we moved accounts there, hence some of the delay getting things firmly established. If you would like a copy, let me know.

55. Jacob failed to disclose the material fact that the “independent” lawyer who “validated” this conclusion relied solely on the letter from Jacob to Firm Two, in which Jacob falsely described his and IBS’s services.

56. Jacob also failed to disclose to the advisory clients that he and IBS were required to be registered as investment advisers in several states.

D. TOLLING AGREEMENT

57. Respondents entered into tolling agreements in which they agreed to toll any applicable statute of limitations period up to and including March 10, 2015, through October 5, 2015.

E. VIOLATIONS

58. As a result of the conduct described above, IBS and Jacob willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 10(b) of the Exchange Act makes it unlawful for any person to use or employ, in connection with the purchase or sale of any security any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe. Rule 10b-5 under the Exchange Act makes it unlawful for any person, directly or indirectly, (a) to employ any device scheme, or artifice to defraud, (b) to make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

59. As a result of the conduct described above, IBS and Jacob willfully violated Sections 206(1) and 206(2) of the Advisers Act. Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against IBS pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Jacob pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act, Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall each file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If either of the Respondents fails to file the directed answer, or fails to appear at a hearing after being duly notified, that Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually

related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary