

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2885 / May 28, 2009

INVESTMENT COMPANY ACT OF 1940
Release No. 28750 / May 28, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13493

In the Matter of

Melissa M. Hurley,

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 MELISSA M. HURLEY**

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 Melissa M. (Lisa) Hurley (“Hurley” 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 her 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 Melissa M. Hurley (“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 undisclosed agreements between BISYS Fund Services, Inc. ("BISYS"), a mutual fund administrator, and mutual fund advisers, including AmSouth Bank and its two adviser subsidiaries, AmSouth Investment Management Company and AmSouth Asset Management (collectively, "AmSouth"). Former BISYS vice president and general counsel, Melissa M. (Lisa) Hurley, knew about several of BISYS' side agreements, and reviewed drafts of AmSouth's side agreements. BISYS entered into side agreements obligating BISYS 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 agreements, 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. Hurley reviewed draft side agreements, including AmSouth's 1999 and 2000 side agreements, and knew that the marketing arrangement should be disclosed to fund trustees and shareholders. Hurley did not disclose the terms of the side agreements to the fund trustees or shareholders. In 2003, Hurley also drafted a disclosure template concerning the marketing arrangements for certain fund shareholders, and reviewed and commented on a disclosure template for certain fund boards of trustees. These disclosure templates did not disclose material facts such as the written nature of the agreements, the exchange of a portion of the administration fee for a recommendation to the fund boards, or the source of funds used for marketing.

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

A. RESPONDENT

1. Melissa M. (Lisa) Hurley, 53, resides in New York state. Hurley was senior vice president and general counsel of BISYS from May 1998 to approximately 2002, and executive vice president and general counsel of BISYS from approximately 2002 through 2006. She is a member of the state bars of New York and Connecticut. Since approximately April 2007, she has been employed by a holding company of an investment adviser, as senior counsel.

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.

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 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 which 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

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 assistance in preparing offering documents such as prospectuses and statements of additional information (“SAIs”), compliance reports, and shareholder reports. In addition, BISYS made its employees available to serve as officers and trustees 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 connection with 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 funds, also entered into an undisclosed side agreement with the adviser. The side agreement described how 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,

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 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.

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.

D. HURLEY'S ROLE IN THE MARKETING ARRANGEMENTS

9. Shortly after Hurley began working at BISYS, in May 1998, she retained outside counsel to provide legal advice regarding marketing arrangements. Hurley received and read a written memorandum from outside counsel on or around October 26, 1998. The memorandum analyzed three types of marketing arrangements, including one in which the administrator agreed to pay a fixed amount of its fee to market the mutual funds. The memorandum stated that when the administrator agrees to pay a fixed amount of its fee to market the mutual funds, the administrator has a "duty to disclose the existence of the arrangement to the Fund's directors." Failure to disclose "creates a risk that the administrator could be found to have aided and abetted any violation of the 1940 Act that results from non-disclosure." The memorandum further stated: "If the administrator knows that the payments it is making to the adviser are unlawful, the administrator could be viewed as aiding and abetting the adviser's violation of the 1940 Act." Additionally, the outside counsel wrote, "We recommend that the administrator ensure that the payment arrangements have been disclosed to the Fund's directors and that the Fund's SAI contain" sufficient disclosure, i.e., the "existence of the payments." Hurley did not disclose the AmSouth marketing arrangement to the AmSouth Funds' board of trustees or to the AmSouth Funds' shareholders even though she received, reviewed, and commented on drafts of the 1999 and 2000 AmSouth marketing side letters.

10. Hurley reviewed the two draft side agreements with AmSouth, one in 1999 and one in 2000, and knew they made clear commitments to set aside a designated portion of BISYS' fees for marketing the AmSouth Funds. During her review of the 2000 draft side agreement, she wrote, "Does this mean we are using fund service fee revenues for distribution support? = Illegal under 12b-1." Hurley did not, however, disclose the AmSouth side agreements, or any other side agreement, to fund trustees.

11. In a December 17, 2001 email exchange, a BISYS in-house counsel wrote to Hurley and the general counsel of the BISYS Group, that with regard to renewals and renegotiations of marketing arrangements, the BISYS president "makes the call." The in-house counsel continued, "To the extent possible, I try to soften our commitment or do other things to make the arrangement more palatable." The general counsel of the BISYS Group replied to Hurley and the in-house counsel, "I believe in renewals/renegotiations the goal is to eliminate not just soften our commitment." Hurley then forwarded this email exchange to BISYS' president -- without sending a copy to either the BISYS Group's general counsel or to the in-house counsel -- and added, "I think realistically" some of the side agreements "will not go away" despite the "lofty goal."

12. In 2003, Hurley reviewed and commented on a disclosure template for fund trustees. In the fall of 2003, the Distribution Assistance Program (“DAP”) disclosure was made to those fund boards with an affiliated adviser that had a marketing arrangement with BISYS, including AmSouth and eight other mutual fund families. Hurley also reviewed and commented on a draft DAP disclosure for the AmSouth Funds’ board of trustees. In September 2003, the AmSouth Funds’ trustees received the DAP disclosure from a BISYS manager. The disclosure described marketing arrangements as an “informal arrangement under which BISYS voluntarily expends its own assets in marketing the Funds.” This disclosure was misleading, however, because it failed to describe the exchange of a portion of the administration fee for a recommendation to the fund boards, and the fact that BISYS expenditures were not voluntary, but had been negotiated and agreed upon by the parties.

13. On July 10, 2003, Hurley wrote to the legal services unit that “[g]iven the current focus on revenue sharing arrangements involving investment advisors, it is important that BISYS, at a minimum, disclose” the marketing arrangement practice “in the SAI of all funds” with such arrangements. To that end, Hurley drafted a template for inclusion in AmSouth’s and 12 other funds’ SAIs concerning the marketing arrangements. Hurley wrote, “Disclosure should be simple and straightforward, to the effect that “The Distributor may finance from it [sic] own resources certain activities intended to result in the distribution of the Funds’ shares.” Despite calling for disclosure, the template was misleading because it, among other things, failed to describe the nature of the arrangement in which BISYS contractually agreed to set aside a certain portion of its administration fee to be used at the adviser’s direction in exchange for adviser recommending BISYS as administrator to the funds’ board. The disclosure that appeared in at least six SAIs -- including AmSouth Funds’ SAI dated November 28, 2003 -- was very similar to Hurley’s disclosure template. Specifically, the AmSouth Funds’ SAI disclosure stated: “[t]he Distributor [BISYS] and/or its affiliates, may finance from their own resources, certain activities intended to result in the distribution of the Funds’ Class A Shares and Class B Shares.”

14. In BISYS’ fiscal year 2003, Hurley received a performance bonus as part of her BISYS compensation package. The bonus was based partly on the objective of increasing the Investment Services Division’s earnings (of which Hurley’s division at BISYS was a part) which included earnings from administration services.

E. VIOLATIONS

15. As a result of the conduct described above, Hurley willfully aided and abetted and caused AmSouth Asset Management’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 Melissa M. Hurley’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 Hurley shall cease and desist from 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 \$15,000 and prejudgment interest of \$5,569.22, and a civil money penalty of \$15,000, for a total amount of \$35,569.22, 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 Melissa M. (Lisa) Hurley 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