

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78147 / June 23, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4435 / June 23, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32160 / June 23, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17315

In the Matter of

**ROSS, SINCLAIRE &
ASSOCIATES, LLC AND
MURRAY SINCLAIRE, JR.,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 203(e) AND 203(f) 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**

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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), against Ross, Sinclair & Associates, LLC (“RSA”) and Murray Sinclair, Jr. (“Sinclair,” or collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these

proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer the Commission finds¹ that:

SUMMARY

1. From at least January 2007 through December 2012 (the “relevant period”), Nicholas L. Fry II (“Fry”), president of registered investment adviser Fry Hensley and Company (“FHC”), took advantage of his close relationship with broker-dealer RSA to carry out a fraudulent scheme whereby Fry charged his advisory clients inflated commissions through RSA. During the relevant period, RSA permitted Fry to be involved in effecting equity securities trades for FHC clients at RSA. Fry’s involvement included setting the amount of commissions, markups, and markdowns (“Transaction Charges”) that RSA charged its customers, despite the fact that Fry did not have the required Series 7 license from the Financial Industry Regulatory Authority, Inc. (“FINRA”) to do this work. RSA purportedly assigned Jane Fry, Fry’s wife and an RSA registered representative, as the RSA “account executive” on FHC’s client accounts, and paid her 50% of the Transaction Charges that RSA collected, even though Jane Fry did essentially no work for RSA and was generally not involved in Fry’s equity trading for FHC’s clients. In breach of his best execution obligation and unbeknownst to FHC clients, Fry routinely set the Transaction Charges for these transactions much higher than the required minimum which was available through RSA. The higher charges inured to the benefit of Fry, FHC (through Jane Fry) and RSA. Throughout the relevant period, RSA and Sinclair (RSA’s president and CEO) authorized Fry to set the Transaction Charges for FHC client equity transactions despite the fact that they knew Fry did not have the required FINRA license. RSA and Sinclair also arranged for Fry and FHC to directly benefit from the higher charges by paying Jane Fry half of the Transaction Charges that RSA collected on Fry’s equity trades. RSA and Sinclair also benefited by keeping half of the Transaction Charges.

RESPONDENTS

Ross, Sinclair & Associates, LLC

2. RSA is an Ohio limited liability company and a broker-dealer registered with the Commission since 2005. In 2005, RSA succeeded to the business of Ross, Sinclair and Associates, Inc., an Ohio corporation that had been registered with the Commission as a broker-dealer since 1989. In addition to being a broker-dealer, RSA has been registered with the Commission as an investment adviser from October 2009 to June 2012 and from September 2013

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

to the present. RSA has been a member of FINRA since RSA's formation in 2005. RSA's principal office is located in Cincinnati, Ohio.

Murray Sinclair, Jr.

3. Sinclair is a resident of Cincinnati, Ohio. During RSA's existence, Sinclair has been RSA's president and CEO and he currently owns 90% of the firm. Sinclair has been associated with various broker-dealers since 1985. Sinclair holds the following licenses from FINRA: General Securities Representative (Series 7), General Securities Principal (Series 24), Municipal Securities Principal (Series 53), Equity Trader (Series 55) and Uniform Securities State Law (Series 63).

OTHER RELEVANT ENTITY AND PERSON

Fry Hensley & Company and Nicholas L. Fry II

4. FHC was an investment advisory firm located in Cincinnati, Ohio. FHC was incorporated as an Ohio corporation in 1993 and is now defunct. FHC was registered with the Commission as an investment adviser from 1994 to August 2012, and registered as an investment adviser with the State of Ohio from March 2012 to December 2013. Between 2004 and 2012, FHC's assets under management varied from approximately \$25 million to \$33 million.

5. During the relevant period, Fry was FHC's sole owner, president and chief compliance officer. From 1993 through June 2008 and then again from October 2011 to August 2012, RSA formally registered Fry with FINRA as a representative associated with RSA. However, throughout the relevant period, Fry was associated with RSA. At all times, Fry held only a Series 6 license with FINRA (i.e., Limited Representative – Investment Company and Variable Contracts Products license) and has never held a Series 7 license (i.e., General Securities Representative license). From 2001 to December 2013, Fry held an Ohio investment adviser representative license. Fry was married to Jane Fry.

6. In March 2013, the Commission issued an Order Instituting Public Administrative and Cease and Desist proceedings against FHC and Fry arising from their role in the facts set out herein. See Advisers Act Release No. 3564 (Mar. 8, 2013). In October 2013, the Commission issued a settled order that: (1) found that FHC had willfully violated Sections 206(1), 206(2), 206(4) and Rule 206(4)-4 thereunder, and Section 207 of the Advisers Act, that Fry had willfully violated Sections 206(1), 206(2), and Section 207 of the Advisers Act and willfully aided and abetted and caused FHC's violations; (2) ordered FHC and Fry to cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2) and 207 of the Advisers Act; (3) censured FHC; (4) barred Fry from associations with any broker, dealer, investment adviser, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibited him from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and (5) waived disgorgement and did not impose a civil penalty based on FHC and Fry's statements of financial condition and other information submitted to the Commission. See Advisers Act Release No. 3708 (Oct. 30, 2013).

7. In December 2013, the Ohio Division of Securities issued a Consent Order revoking FHC's Ohio investment adviser license.

FACTS

Background

8. Sinclair started RSA in 1989 and currently owns 90% of the firm. RSA is both an SEC registered broker-dealer and SEC registered investment adviser. RSA claims to be a "full service brokerage and investment banking firm" with 15 offices in 10 states. RSA's website states that it specializes in municipal finance, corporate finance and institutional sales and trading.

9. FHC, now defunct, was a small investment adviser that Fry operated for most of the relevant period from inside RSA's offices with only a secretary and one other employee. FHC provided discretionary investment advice, mostly to high net worth individuals. Fry was ultimately responsible for providing FHC's advisory services. Fry met with clients, determined the appropriate investment strategy with them, and carried it out, in large part by directing securities trading in his clients' RSA brokerage accounts. FHC had written contracts with its clients that specified the advisory fee they would be charged for FHC's advisory services, typically ranging from 0.5% to 1.75% of assets under management annually.

RSA and FHC's Close Relationship

10. By the start of the relevant period, RSA and FHC had been closely associated for many years and Sinclair and Fry were friends. From approximately 1993 to December 2010, RSA leased office space and related services to FHC in RSA's Cincinnati office. Fry had long recommended that FHC's clients keep brokerage accounts at RSA, and the vast majority of their clients did so. Sinclair had previously referred a number of his own brokerage customers to Fry and FHC for investment advisory services.

11. From 1993 to mid-2008, RSA formally registered Fry with FINRA as a limited representative associated with RSA. In June 2008, RSA filed a Form U-5 Termination Form with FINRA, noting that Fry was no longer a representative formally associated with it. From October 2011 to August 2012, RSA again registered Fry with FINRA as a representative formally associated with RSA. However, Fry's relationship with RSA remained identical during the period he was not formally associated with RSA and throughout the relevant period, RSA maintained a written supervisory procedures manual ("SPM") that designated Fry as a person under RSA's supervision. For most of the relevant period, RSA designated Sinclair as the person to supervise Fry.

12. From at least 1993 until Jane Fry's death in October 2011, RSA formally registered Jane Fry with FINRA as a representative associated with RSA. Jane Fry held the following FINRA licenses: General Securities Representative (Series 7) and Uniform Securities State Law (Series 63). Throughout the relevant period, RSA's SPM designated Jane Fry as a person under RSA's supervision, and designated Sinclair as the person to supervise Jane Fry.

13. Because Fry was not properly licensed, RSA listed Jane Fry on its records as the "account executive" (i.e., the General Securities Representative) assigned to most of RSA's

customers that were also FHC's clients and compensated her rather than Fry for Transaction Charges charged to FHC client accounts.

14. Jane Fry did little or no work at RSA or for FHC clients, did not have an RSA desk, phone, or computer and was rarely in the office during business hours. Instead, for FHC clients, Fry was involved in effecting equity securities transactions through RSA, despite lacking the required FINRA Series 7 license for this work.

15. Despite Jane Fry's nominal role at RSA, RSA paid her a monthly salary of \$12,500 and credited her with 50% of the Transaction Charges it collected from FHC's clients. RSA kept the other 50%.

16. By no later than 2004, FHC was insolvent, with expenses exceeding its advisory revenues. According to Fry, this was due partly to high health insurance costs. In 2005, Fry and Sinclair negotiated a new agreement between their companies, in which RSA agreed to take FHC's two existing employees other than Fry onto its books as employees, to provide them with access to RSA's healthcare plan, and to pay the employees per Fry's instructions. Despite being on RSA's payroll, the employees continued to work for FHC at Fry's direction and under his supervision. RSA did not bear the financial burden of hiring these employees. Instead, the employees' salaries, as well as the cost of other certain services RSA provided to FHC, were deducted from the amount of compensation paid to Jane Fry. After making these deductions, RSA paid Jane Fry any surplus. Any deficit amount was carried forward, and was expected to be paid out of Jane Fry's share of the Transaction Charges that Fry set for his clients during the following month.

17. In addition to the above arrangements, RSA supplied FHC with office space, computers, telephones, internet and other IT services, as well as access to RSA's research tools (e.g., use of its Bloomberg terminal) in exchange for 50% of FHC's advisory fees. In January 2009, FHC and RSA amended this part of their agreement, and FHC agreed to pay RSA a fixed fee of \$70,000 per year for office space and these services. However, FHC's financial condition did not improve and it could not pay the amounts it had agreed to pay RSA. As a result, FHC developed a growing debt to RSA, which was carefully tracked by RSA's Chief Financial Officer. By late 2010, this debt had grown to more than \$200,000. In December 2010, RSA and Sinclair required FHC and Fry to move out of RSA's office space, and FHC began leasing its own space on a different floor of the same building.

RSA and Sinclair Authorized Fry to Effect Equity Securities Transactions at RSA

18. Throughout the relevant period, Fry typically conducted equity trading for his clients in bulk by directing that the trades be executed on a riskless principal basis. In a typical bulk trade, Fry first determined which FHC clients would purchase or sell a particular equity security. Then, he or one of his employees at his direction completed an RSA order ticket that specified the total number of shares that Fry wanted RSA to purchase or sell for these clients and specified the capacity (e.g., riskless principal) in which RSA should act to handle the order. Fry or one of his employees took the order ticket to RSA's "cage," time-stamped it and provided the order ticket to RSA's cage personnel, who entered it into RSA's order entry system as RSA's record of the trade and transmitted the order to RSA's clearing firm for execution. Fry's orders, when

executed, caused RSA to purchase or sell securities with the market in one of its principal trading accounts. After the trade was completed, and the price that RSA had paid or received for the security was known, Fry (or his representatives at his direction) provided the RSA cage with the information needed to allocate the bulk trade to FHC's clients, specifying which of his clients would participate, the number of shares each client was to purchase or sell, and the price FHC's clients would pay or receive.

19. The difference between the price RSA paid or received with the market and the price Fry set for his clients -- the markup or markdown -- was RSA's compensation for the trade in lieu of a commission being charged. This type of equity trading, typically referred to as "riskless principal" trading, represented the overwhelming majority of the equity transactions that were made for FHC's clients. During the relevant period, Fry also made a limited number of agency trades for his clients in which he set the commission that RSA charged. Throughout the relevant period, RSA gave Fry the discretion to set the amount of Transaction Charge for each of his equity trades, subject to Sinclair's post-trade approval each day.

20. During the relevant period, Fry typically handled these aspects of effecting equity securities transactions for RSA instead of Jane Fry, on some occasions with the assistance of another RSA registered representative. In October 2011, Jane Fry died, and FHC's clients' brokerage accounts that had been assigned to her became so-called "house accounts," and FHC's clients were reassigned to Sinclair. Between October 2011 and December 2012, Sinclair was not identified as the individual account representative of record on trade confirmations and monthly account statements provided to the FHC clients previously assigned to Jane Fry. Despite the fact that Sinclair was now assigned to FHC's clients' brokerage accounts, Sinclair continued to permit Fry to set the amount of Transaction Charges that RSA charged to FHC's clients. Sinclair also continued to approve Fry's equity trades and Transaction Charges after the trades had been completed.

RSA Profited from FHC and Fry's Decision to Impose Higher Transaction Charges on Their Clients

21. RSA had a \$50 minimum transaction charge for equity transactions, and Fry was authorized to set Transaction Charges at that level. However, Fry typically set his clients' Transaction Charges at much higher levels than \$50.

22. Between January 1, 2007 and December 31, 2012, and for those FHC clients assigned to Jane Fry, Fry (or his representatives at his direction) directed RSA to charge his clients Transaction Charges in excess of the \$50 minimum on more than 9,900 occasions (or approximately 73% of Fry's equity trade allocations during the relevant period). On these trades, Fry directed RSA to charge his clients an *average* of \$197.98, or roughly 4 times the minimum amount. In many cases, Fry instructed RSA to charge FHC clients substantially more. Many of these transactions were in highly liquid, medium to large capitalization securities that were easily purchased or sold through national exchanges.

23. In total, Fry directed RSA to charge those clients purportedly assigned to Jane Fry \$1.5 million more than what would have been charged if the \$50 minimum had been consistently applied, of which RSA retained at least \$703,335.16.

24. By directing RSA to charge his clients higher levels, Fry increased the amount of compensation credited to Jane Fry and helped pay FHC's debts to RSA for paying FHC employees' salaries and for other services RSA provided to FHC. Fry also used hundreds of thousands of dollars of Transaction charges paid to Jane Fry to keep FHC in business and to support himself and Jane Fry. At one point, Sinclair spoke with Fry and informed him that he could charge his clients less, but Fry declined to do so, believing that the level of advisory services he provided to his clients justified the higher Transaction Charges.

25. After Jane Fry's death, RSA kept 100% of the Transaction Charges that Fry set for his clients, allowing RSA to recoup from FHC's clients some of the money that FHC owed it. At this time, RSA formally re-registered Fry with FINRA as a representative associated with RSA. Despite the fact that Fry never obtained his Series 7 license, RSA continued to give Fry discretion to set customer Transaction Charges, subject to daily post-trade approval by Sinclair.

26. Throughout the relevant period, Sinclair was aware that Fry did not hold a Series 7 license, and also that Fry was involved in effecting equity security transactions at RSA and setting Transaction Charges much higher than he could.

VIOLATIONS

27. As a result of the conduct described above, RSA willfully violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, which provide that no registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects, or is involved in effecting, such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including, but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which broker or dealer is a member.

28. As a result of the above of the conduct described above, Sinclair willfully aided and abetted and caused RSA's violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Sections 203(e) and 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent RSA shall cease and desist from committing or causing any violations and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 promulgated thereunder.

B. Respondent Sinclair shall cease and desist from committing or causing any violations and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 promulgated thereunder.

C. Respondent RSA is censured.

D. Respondent Sinclair shall be, and hereby is, subject to the following limitations on his activities for a period of twelve months: Respondent Sinclair shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization. Respondent Sinclair is also prohibited for a period of twelve months from serving in a supervisory capacity with any registered investment company, or with any investment adviser or depositor of, or principal underwriter for, a registered investment company.

E. Respondent RSA shall pay disgorgement of \$703,335.16, prejudgment interest of \$99,239.54 and a civil penalty of \$100,000 to the Securities and Exchange Commission.

Payment shall be made in the following installments:

- (i) \$225,643.68 due within 21 days from the entry of this Order;
- (ii) \$225,643.68 due August 31, 2016;
- (iii) \$225,643.68 due January 15, 2017;
- (iv) \$225,643.66 due April 3, 2017.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or 31 U.S.C § 3717 shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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
- (3) Respondents 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 RSA as a 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 Timothy L. Warren, Associate Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

F. Respondent Sinclair shall pay a civil penalty of \$50,000 to the Securities and Exchange Commission.

Payment shall be made by Sinclair in the following installments:

- (i) \$12,500 due within 21 days from the entry of this Order;
- (ii) \$12,500 due August 31, 2016;
- (iii) \$12,500 due January 15, 2017.
- (iv) \$12,500 due April 3, 2017.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or § 31 U.S.C. 3171 shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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
- (3) Respondents 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 Sinclair as a 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 Timothy L. Warren, Associate Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

G. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs E and F above. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 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 Securities and Exchange 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 Respondents 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.

V.

IT IS FURTHER ORDERED that solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in this Order are true and admitted by Respondent Sinclair, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission

Brent J. Fields
Secretary