

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92166 / June 14, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5752 / June 14, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20366

In the Matter of

**INTERVEST
INTERNATIONAL, INC. and
CRAIG L. CARSON,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST
PROCEEDINGS, PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTIONS 203(e), 203(f),
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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Intervest International, Inc. (“Intervest”) and Craig L. Carson (“Carson”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f), 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 Respondents’ Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of breaches of fiduciary duty by registered investment adviser Intervest International, Inc. (“Intervest”) and one of its investment adviser representatives (“IAR”) Craig L. Carson (“Carson”) in connection with recommendations and purchases of certain unit investment trusts (“UITs”) and Class A shares of certain mutual funds and an interval fund (“Funds”). First, from at least April 14, 2016, through August 8, 2019, Carson recommended and purchased “standard” UIT units (“Standard Units”) bearing transactional sales charges on behalf of Intervest advisory client accounts even though the accounts were eligible to purchase identical “Fee Account Unit” versions of the UITs that bore no transactional sales charges. Second, from at least May 19, 2016, through August 28, 2019, Carson recommended and purchased certain Funds on behalf of Intervest advisory client accounts that charged front-end sales loads (“Fund Class A shares”) even though the accounts were eligible to purchase the Funds’ Class A shares without the sales loads (“load-waived Class A shares”). As a result of the accounts’ purchases of the more expensive Standard Units and Fund Class A shares, the accounts collectively paid approximately \$378,295.36 in avoidable transaction costs, all of which Intervest International Equities Corporation (“IIEC”), Intervest’s wholly-owned subsidiary and the introducing broker on the transactions, collected as commissions. IIEC passed 70% of that amount to Carson as its registered representative. However, Intervest and Carson failed to disclose the resulting conflicts of interest associated with these practices, including that the advisory client accounts were otherwise eligible to purchase the less expensive Fee Account Units and Fund load-waived Class A shares, and they also breached their duty to seek best execution for those transactions. As a result, Intervest and Carson willfully² violated Section 206(2) of the Advisers Act.

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

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

Respondents

2. **Intervest**, a Florida corporation headquartered in Colorado Springs, Colorado, has been registered with the Commission as an investment adviser since 2006. Intervest provides portfolio management services to individual client accounts on a non-discretionary basis. According to its Form ADV Part 2A (the “Firm Brochure”) dated March 31, 2021, Intervest had approximately \$236 million in assets under management as of December 31, 2020.

3. **Carson**, age 74, is a resident of Colorado Springs, Colorado. Carson has been associated with Intervest and IIEC as an IAR and registered representative, respectively, since 2003. He maintains Series 63 and 65 certifications.

Other Relevant Entity

4. **IIEC**, a Florida corporation headquartered in Colorado Springs, Colorado, and a wholly-owned subsidiary of Intervest, has been registered as a broker-dealer with the Commission since 1987.

Background

Intervest’s and Carson’s Advisory Services

5. From at least April 14, 2016, through August 28, 2019 (the “Relevant Period”), Intervest offered securities portfolio management services, including recommending, monitoring, and rebalancing portfolio assets, to individual client accounts in exchange for an advisory fee based upon the accounts’ assets under management. For the advisory client accounts that Carson managed as an IAR, Intervest paid him 85% of the annual advisory fees that it collected from the accounts. In establishing their advisory relationship with Intervest, Carson’s clients signed advisory account opening documents, which included an Intervest rebalancing agreement that authorized Carson to periodically rebalance their accounts in accordance with the client’s investment objectives. Carson made most of the Standard Unit and Fund purchases pursuant to his authority under the rebalancing agreements.

Carson’s Recommendations and Purchases of UITs

6. A UIT is an investment vehicle whereby the creator or sponsor selects a fixed pool of securities pursuant to a chosen strategy and deposits them into a trust for a pre-determined period, at the end of which the trust terminates. Once created, a UIT issues “units” for purchase by investors.

7. The UITs recommended and purchased by Carson during the Relevant Period included a sales charge that typically ranged from 2.75% to 3.95% of their units’ initial public offering (“IPO”) price. This sales charge was comprised of the following: (1) a transactional sales charge, typically between 2.25% and 3.45% of the IPO price, all of which was collected as dealer concessions by IIEC as the introducing broker on the transactions; and (2) a creation and

development fee, typically 0.50% of the IPO price, which was paid to the UITs' sponsors.

8. The UITs that Carson recommended and purchased made available units of the same UIT that were identical, except that some were sold with a transactional sales charge and others were sold with no transactional sales charge. For brokerage customers who paid for their services on a transactional basis, the UITs offered more expensive units that included the full sales charge, commonly known as "Standard Units." Alternatively, for accounts that were already paying fees to a registered investment adviser for advisory services, the UITs offered less expensive "Fee Account Units," which only charged the creation and development fee of 0.50% and did not include the transactional sales charge. Thus, for advisory client accounts, including the Intervest accounts managed by Carson, it was in the clients' best interests to purchase the less expensive Fee Account Units.

9. During the Relevant Period and on behalf of certain advisory client accounts, Carson recommended and purchased Standard Units even though the accounts were eligible to purchase the UITs' identical, but less expensive, Fee Account Units. As a result of these Standard Unit purchases, the accounts collectively paid avoidable transaction sales charges of approximately \$214,605.63, all of which IIEC collected as the introducing broker. IIEC then passed 70% of that amount, or approximately \$150,223.94, to Carson as the registered representative on the transactions.

Carson's Recommendations and Purchases of Fund Class A Shares

10. During the Relevant Period and on behalf of certain advisory client accounts, Carson recommended and purchased Class A shares of two mutual funds and one interval fund that charged front-end sales loads of up to 5.75% of the money invested. However, the Funds offered less expensive, but otherwise identical, load-waived versions of their Class A shares to fee-paying accounts participating in an investment advisory program or to accounts that cleared their transactions through the clearing broker that IIEC used. Accordingly, the accounts were eligible to purchase the Funds' identical, but less expensive, load-waived Class A shares. As a result of these Fund purchases, the accounts collectively paid avoidable front-end sales loads of approximately \$163,689.73, all of which IIEC collected as the introducing broker. IIEC then passed 70% of that amount, or approximately \$114,582.11, to Carson as the registered representative on the transactions.

Disclosure Failures

11. Intervest made the following disclosures during the Relevant Period:
- From March 30, 2016, through March 30, 2017, Intervest's Firm Brochure disclosed that, because all of Intervest's IARs were also registered representatives of IIEC, "a potential conflict of interest arises because the representative may receive commissions upon the sale of investments" to an advisory client.
 - From March 31, 2017, through the end of the Relevant Period, the Firm Brochures disclosed that Intervest's IARs "offer securities products and receive normal and

customary commissions as a result of such transactions, which presents a conflict of interest because they have an interest in making commissions on sales that may be adverse to your interests.”

- Throughout the Relevant Period, Intervest’s Form ADV Part 2B concerning Carson disclosed that he had a “potential” conflict of interest when offering investment advisory services because he “may receive commissions in his capacity as a registered representative” and, “[w]ith this in mind, Intervest maintains policies and procedures to ensure that recommendations made to you are in your best interests and consistent with Intervest’s and Mr. Carson’s fiduciary responsibilities.”
- Throughout the Relevant Period, Intervest’s rebalancing agreements disclosed that Intervest “agrees to act in the Client’s best interest at all times should a conflict arise.”

12. During the Relevant Period, Carson also periodically sent to his clients additional disclosure documents that he drafted and Intervest approved describing his advisory services and disclosing that the advisory fees charged against client accounts were in addition to any brokerage expenses, which may include commissions.

13. As investment advisers, Intervest and Carson were obligated to disclose all material facts to their advisory clients, including any conflicts between them and their clients that could affect the advisory relationship and how those conflicts could affect the advice Intervest and Carson provided to their clients. To meet this fiduciary obligation, Intervest and Carson were required to provide their advisory clients with full and fair disclosure that was sufficiently specific so that clients could understand the conflicts of interest concerning Intervest’s and Carson’s advice about investing in Standard Units and Fund Class A shares and could have an informed basis on which they could consent to or reject the conflicts.

14. Intervest and Carson did not adequately disclose all material facts regarding the conflict of interest that arose when Intervest and Carson invested advisory client accounts in the Standard Units and Fund Class A shares that generated commissions for IIEC and Carson while identical, but less expensive, versions of each product were available that would not provide that additional compensation.

Best Execution Failures

15. An investment adviser’s fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.³

16. During the Relevant Period, Intervest and Carson caused certain advisory clients to invest in Standard Units and Fund Class A shares when otherwise identical, but less expensive, Fee Account Units or Fund load-waived Class A shares were available to clients that presented a more favorable value under the particular circumstances occurring at the time of the transactions. As a

³ 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).

result, Intervest and Carson violated their duty to seek best execution for those transactions.

Violations

17. As a result of the conduct described above, Intervest and Carson willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an 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. Scienter is not required to establish a violation of Section 206(2), but 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)).

Disgorgement and Civil Penalties

18. The disgorgement and prejudgment interest ordered in paragraph 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 Exchange Act.

IV.

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

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

- A. Respondents cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.
- B. Respondents are censured.
- C. Respondents shall pay disgorgement and prejudgment interest to compensate past and present advisory client accounts that were affected by the conduct detailed in this Order as follows:
 - i. Respondent Intervest shall pay disgorgement of \$113,488.61 and prejudgment interest of \$16,789.54 consistent with the provisions of this Subsection C. Respondent Carson shall pay disgorgement of \$264,806.75 and prejudgment interest of \$39,589.43 consistent with the provisions of this Subsection C.

- ii. Within 10 days of the issuance of this Order, Respondent Intervest shall deposit \$130,278.15 and Respondent Carson shall deposit \$304,396.18 (collectively the two deposits constitute the “Distribution Fund”) into an escrow account established by Intervest at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposits in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 - 17 C.F.R. § 201.600.
- iii. Respondent Intervest shall be responsible for administering the Distribution Fund and may hire a professional to assist Intervest in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Intervest and shall not be paid out of the Distribution Fund.
- iv. Respondent Intervest shall pay from the Distribution Fund to each affected advisory client account (“affected account”) an amount representing the avoidable UIT transactional sales charges and Fund sales loads incurred by the affected accounts during the Relevant Period 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. No portion of the Distribution Fund shall be paid to any affected account in which Respondents Intervest or Carson, or any of their current or former officers or directors, has a financial interest.
- v. Respondent Intervest shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent Intervest shall make itself available, and shall require any third-parties or professionals retained by Respondent Intervest to assist in formulating the methodology for its Calculation and/or administration of the Distribution Fund 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. Respondent Intervest also shall provide 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 Respondent Intervest’s proposed Calculation or any of its information or supporting documentation, Respondent Intervest 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 the Commission staff notifies Respondent Intervest of the

objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- vi. After the Calculation has been approved by the Commission staff, Respondent Intervest shall submit a payment file (the "Payment File") within thirty (30) days 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 account; (2) the exact amount of the payment to be made from the Distribution Fund to each affected account; and (3) the amount of any *de minimis* threshold to be applied.
- vii. Respondent Intervest shall complete the disbursement of all amounts payable to affected investor accounts within ninety (90) days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xi of this Subsection C. Intervest shall notify the Commission staff of the dates and the amounts paid in the initial distribution.
- viii. If Respondent Intervest is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected account or any factors beyond Intervest's control, Intervest 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 Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph x of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:
 - 1. Intervest may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - 2. Intervest 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. Intervest 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

Payments by check or money order must be accompanied by a cover letter identifying Intervest and Carson as Respondents 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 Kimberly L. Frederick, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

- ix. A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent Intervest shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund, including but not limited to tax obligations resulting from the Distribution 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 Intervest and shall not be paid out of the Distribution Fund.

- x. Within 150 days after Respondent Intervest completes the disbursement of all amounts payable to affected accounts, Intervest shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Intervest shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee 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 Intervest has made payments from the Distribution Fund to affected accounts in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Intervest and Carson as Respondents in these proceedings and the file number of these proceedings to Kimberly L. Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294. Intervest shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional

requests by the Commission staff in connection with the accounting and certification.

- xi. The Commission staff may extend any of the procedural dates set forth in Paragraphs ii through x of this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund 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.

D. Respondents Intervest and Carson shall pay civil money penalties in the amounts of \$75,000 and \$50,000, respectively, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment by Intervest shall be made in the following installments: \$25,000 within 90 days of the entry of this Order; \$25,000 within 180 days of the entry of this Order; and the remaining \$25,000 within 270 days of the entry of this Order. Payment by Carson shall be made in the following installments: \$15,000 within 90 days of the entry of this Order; \$15,000 within 180 days of the entry of this Order; and the remaining \$20,000 within 270 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues thirty (30) days after the entry of this Order pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the amount due. If Respondents fail to make any payments by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent 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) Respondent 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 Intervest or Carson as a Respondent in this proceeding, and the file number of this proceeding; a copy of

the cover letter and check or money order must be sent to Kimberly L. Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado, 80294.

E. 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 Intervest and Carson 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 their 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 Intervest or Carson 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, the findings in this Order are true and admitted by Respondent Carson, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Carson under this 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 Carson 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.

Vanessa A. Countryman
Secretary