

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27978; 812-13394]

Citi Investor Services, Inc. f/n/a The BISYS Group, Inc., et al.; Notice of Application and Temporary Order

September 24, 2007

Agency: Securities and Exchange Commission (“Commission”).

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Citi Investor Services, Inc. f/n/a The BISYS Group, Inc. (“BISYS”) on July 27, 2007 by the United States District Court for the Southern District of New York (the “Injunction”), until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

Applicants: BISYS, Heartland Investor Services, LLC, Mercantile Investment Services, Inc., ProFunds Distributors, Inc. and Victory Capital Advisers, Inc. (collectively, other than BISYS, the “BISYS Underwriter Applicants,” and, together with BISYS, the “BISYS Applicants”); Citigroup Global Markets Inc. (“CGMI”), CEFOF GP I Corp. (“CEFOF”), CELFOF GP Corp. (“CELFOF”), Citibank, N.A. (“Citibank”), Citigroup Alternative Investments LLC (“Citigroup Alternative”), Citigroup Investment Advisory Services Inc. (“Citigroup Advisory”), SSBCP GP I Corp. (“SSBCP”), and SSBPIF GP Corp. (“SSBPIF”, and, together with CGMI, CEFOF, CELFOF, Citibank, Citigroup Alternative, Citigroup Advisory, and SSBCP, the “Citigroup Applicants,” and together with the BISYS

Applicants, the “Applicants”)<sup>1</sup>

Filing Date: The application was filed on June 6, 2007 and amended on September 13, 2007 and September 20, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 19, 2007, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, BISYS, 105 Eisenhower Parkway, Roseland, New Jersey 07068, the BISYS Underwriter Applicants, 100 Summer Street, 15<sup>th</sup> Floor, Boston, Massachusetts, 02110, CGMI, 787 Seventh Ave., 32<sup>nd</sup> Floor, New York, New York 10019, CEFOF and CELFOF, 388 Greenwich Street, New York, New York 10013, Citibank, 153 East 53<sup>rd</sup> Street, 5<sup>th</sup> Floor, New York, New York 10043, Citigroup Alternative, 731 Lexington Avenue, 28<sup>th</sup> Floor, New York, NY 10022, Citigroup Advisory, 787 Seventh Ave., 15<sup>th</sup> Floor, New York, New York 10019, SSBCP and SSBPIF, 338 Greenwich Street, New York, New York 10013.

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<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which BISYS is or hereafter may become an affiliated person in the future (together with the Applicants, the “Covered Persons”).

For Further Information Contact: Shannon Conaty, Senior Counsel, at (202) 551-6827, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821, (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549-0102 (tel. 202-551-8090).

Applicants' Representations:

1. BISYS, a Delaware corporation, directly and through wholly-owned subsidiaries, provides products and support services to financial institutions, including insurance companies, banks and mutual funds. Each of the BISYS Underwriter Applicants is an indirect, wholly-owned subsidiary of BISYS and serves as principal underwriter for one or more registered investment companies or series thereof ("Funds").<sup>2</sup> Each BISYS Underwriter Applicant is registered with the Commission as a broker-dealer under section 15 of the Securities Exchange Act of 1934 ("Exchange Act").

2. On July 27, 2007, the United States District Court for the Southern District of New York entered the Injunction against BISYS in a matter brought by the Commission.<sup>3</sup> The Commission alleged in the complaint ("Complaint") that BISYS violated sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder when it engaged in improper accounting practices

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<sup>2</sup> Neither BISYS nor any of the BISYS Underwriter Applicants serves as investment adviser or depositor for any Fund or as principal underwriter for any registered unit investment trust ("UIT") or registered face amount certificate company.

<sup>3</sup> United States Securities and Exchange Commission v. The BISYS Group, Inc., 07-CIV-4010 (KMK) (S.D.N.Y. May 23, 2007).

that resulted in an overstatement of BISYS's financial results for the fiscal years ended 2001 through 2003 by about \$180 million. The alleged violations involved improperly recording commissions earned by companies before they were acquired by BISYS as its own revenue, the failure to adequately reserve against an aging receivable balance, improper accounting for renewal and bonus commissions, and other improper accounting entries. The Complaint alleged that the resulting inaccurate financial results were incorporated in public filings, annual reports to shareholders, press releases and offering documents. Thus, the Complaint alleged that BISYS violated the financial reporting, books and records, and internal controls provisions of the Exchange Act. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, BISYS consented to a final judgment ("Final Judgment") that includes, among other things, the entry of the Injunction and the payment of disgorgement and prejudgment interest.

3. On August 1, 2007, Citigroup Inc. ("Citigroup") acquired BISYS (the "BISYS Acquisition"). As a result of the BISYS Acquisition, BISYS is now an affiliated person of the Citigroup Applicants, which currently serve as investment advisers, depositors or principal underwriters to Funds. Certain of the Citigroup Applicants serve as investment advisers to employees' securities companies (included in the term "Funds").

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount

certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that BISYS is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction resulted in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants’ conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act. On July 27, 2007, the Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction until the Commission takes final action on an application for a permanent order or, if earlier, September 24, 2007.<sup>4</sup>

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to the Applicants would be unduly and disproportionately severe and that the conduct of

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<sup>4</sup> Investment Company Act Release No. 27915 (July 27, 2007).

Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for any Fund and, with respect to the Citigroup Applicants, occurred prior to the BISYS Acquisition, when they were not affiliated with BISYS. Except as discussed in footnote 5, Applicants state that no director, officer or employee of any of the Applicants who is or was involved in providing investment advisory or underwriting services to the Funds was involved in the conduct which forms the basis of the Injunction.<sup>5</sup> Applicants also state that the matters underlying the Injunction are unrelated to the Applicants' investment advisory, depository and principal underwriting activities. In addition, Applicants represent that no Funds to which any BISYS Underwriter Applicant currently provides underwriting services bought or held any securities issued by BISYS during the period of misconduct alleged in the Complaint, other than with respect to index funds and routine trade errors that were promptly corrected.

5. Applicants further represent that the inability of the Applicants to continue to serve as investment adviser, depositor or principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. The BISYS Underwriter Applicants have distributed, or will distribute as soon as reasonably practical,

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<sup>5</sup> The Complaint contains general allegations relating to the conduct of former employees of the Fund Services Division of BISYS, but does not contain any specific allegations that any directors, officers or employees of any of the Applicants who is or was involved in providing underwriting services to the Funds participated in the conduct which resulted in the Injunction. To the best of the BISYS Applicants' knowledge and belief, any directors, officers or employees that allegedly participated in the conduct that

written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a “Board”) for which the BISYS Underwriter Applicants serve as principal underwriter, including the directors who are not “interested persons,” as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any. These written materials will concern the Final Judgment, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Final Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if the Applicants were barred from serving as investment adviser, depositor or principal underwriter to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in providing the services covered by section 9(a) of the Act to Funds. Applicants further state that prohibiting the Applicants from serving as investment advisers, depositors or principal underwriters to the Funds would adversely affect not only the viability of their businesses, but also the livelihoods of more than 100 employees. Applicants also state that none of the BISYS Applicants has ever previously applied for an exemption pursuant to section 9(c) of the Act.

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resulted in the Injunction are either no longer employed by the Applicants or are not, and will not be, involved in providing investment advisory, depository or underwriting services to the Funds.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Nancy M. Morris  
Secretary