6. Applicants state that the New Funds will operate in a manner identical to the operation of the Initial Funds in the Prior Order, except as specifically noted by applicants (and summarized in this notice), and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

7. Applicants also seek to amend the Prior Order to modify the terms under which the applicants, in the future, may offer Future Funds based on other equity or fixed income indices. The Prior Order is currently subject to a condition that does not permit applicants to register the shares of any Future Fund by means of filing a post-effective amendment to a Fund's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or if the Future Fund could be listed on a national securities exchange (''Exchange'') without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

8. The order would amend the Prior Order to delete this condition. Any Future Funds will (a) be advised by the Advisor or an entity controlled by or under common control with the Advisor; and (b) comply with the terms and conditions of the Prior Order, as amended by any order issued in connection with the present application.

9. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order, as amended by the requested order, are appropriate for the Funds and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Condition

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–15021 Filed 8–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27915; 812–13394]

The BISYS Group, Inc., et al.; Temporary Order

July 27, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against The BISYS Group, Inc. (''BISYS'') on or about 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 or, if earlier, September 24, 2007.

Applicants: BISYS, BISYS Fund Services Limited Partnership, BNY Hamilton Distributors, Inc., Funds Distributor, Inc., Heartland Investor Services, LLC, Mercantile Investment Services, Inc., Performance Funds Distributor, Inc., ProFunds Distributors, Inc. and Victory Capital Advisers, Inc. (collectively, other than BISYS, the ''Underwriter Applicants'', and, together with BISYS, the ''Applicants'').[1]

Filing Date: The application was filed on June 6, 2007.

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 Underwriter Applicants, 100 Summer Street, 15th Floor, Boston, Massachusetts 02110.

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 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 Underwriter Applicants is an indirect, wholly-owned subsidiary of BISYS and serves as principal underwriter for one or more registered management investment companies (''Funds''). Each 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 or about 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.[2] 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 that resulted in an overstatement of BISYS's financial results for fiscal years 2001 through 2003 by about $180 million. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, BISYS consented to the entry of the Injunction and the payment of disgorgement and prejudgment interest.

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 unit investment trust or registered face-amount certificate company. Section 9(a)(3) of

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which BISYS is an affiliated person or may become an affiliated person in the future (together with the Applicants, the ''Covered Persons'').

[2] *United States Securities and Exchange Commission* v. *The BISYS Group, Inc.*, 07–CIV–4010 (KMK) (S.D.N.Y. May 23, 2007).

the Act extends the prohibitions of section 9(a)(2) 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. Applicants state that the entry of the Injunction would result 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.

3. Applicants state that no current officer or employee of any of the Underwriter Applicants who is or was involved in providing underwriting services to the Funds participated in the conduct which resulted in the filing of the Complaint. Applicants also state that none of the Applicants has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants assert that, if the Underwriter Applicants were barred from serving as principal underwriter to the Funds, the effect on their businesses and employees would be severe. Applicants further represent that the inability of the Underwriter Applicants to continue to serve as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders.

5. For these and other reasons discussed in the application, Applicants believe they meet the standard for exemption specified in section 9(c).

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, Applicants, 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

Rule 30–5(a)(7) of the Commission's Rules of Practice and Investigations provides that the Division of Investment Management may exempt persons, for a temporary period not exceeding 60 days, from section 9(a) of the Act, if, on the basis of the facts then set forth in the application, it appears that: (i)(A) the prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (B) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and (ii) granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by the Applicants, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that (i) The prohibitions of section 9(a), as applied to the Applicants, may be unduly or disproportionately severe, (ii) the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (iii) granting the temporary exemption would protect the interests of the investment companies served by the Applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, in the matter of The BISYS Group, Inc., *et al.* (File No. 812–13394),

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants 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 or, if earlier, September 24, 2007.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–15022 Filed 8–1–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56149; File No. SR–BSE–2007–38]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

July 26, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the BSE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the Boston Options Exchange (''BOX'') pilot program that permits BOX to quote certain classes in penny increments (''Penny Pilot Program'') through September 27, 2007. The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).