



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 26, 2006

Mr. Paul R. Eckert
Wilmer, Cutler, Pickering, Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Eckert:

Re: BISYS Fund Services, Inc. LA-2873
Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Mr. Eckert:

This is in response to your letter dated September 18, 2006, written on behalf of BISYS Group, Inc. (Company) and its subsidiary BISYS Fund Services, Inc. (BISYS), and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an ineligible issuer under Rule 405, due to the entry on September 26, 2006, of a Commission Order (Order) pursuant to Section 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, naming BISYS as a respondent.

Based on the facts and representations in your letter, and assuming the Company and BISYS will comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuers by reason of the entry of the Order. Specifically, we determined under these facts and representations that the Company has shown that the terms of the Order were agreed to in a settlement prior to December 1, 2005. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

September 18, 2006

Paul R. Eckert

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BY HAND DELIVERY

Mary J. Kosterlitz, Esq.
Office Chief
Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: In the Matter of BISYS Fund Services, Inc.,
File No. LA-2873

Dear Ms. Kosterlitz:

I am writing on behalf of our client, The BISYS Group, Inc. ("BISYS Group"), in connection with the anticipated settlement of the above-referenced investigation by the Securities and Exchange Commission (the "Commission"). The anticipated settlement will result in the issuance of an order that is described below against BISYS Fund Services, Inc. ("BISYS"), a subsidiary of BISYS Group (the "Order").

BISYS Group seeks a determination by the Commission that it will not be deemed an ineligible issuer under Rule 405 of the Securities Act of 1933 ("Securities Act"), 17 C.F.R. § 230.405, for any purposes, including the definition of "well-known seasoned issuer," as a result of the Order. Relief from the ineligible issuer provisions is appropriate in the circumstances of this case, given the existence of an agreement in principle to settle on or before December 1, 2005 between BISYS and the staff of the Division of Enforcement. BISYS Group further requests that this determination be effective upon the entry of the Order. It is our understanding that the Division of Enforcement does not object to the Division of Corporation Finance providing the requested determination.

BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with BISYS in connection with the contemplated administrative proceedings arising out of the above-captioned investigation, which will be brought pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company

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Act of 1940 (“Investment Company Act”). As a result of these discussions, BISYS has submitted an Offer of Settlement (the “Offer”) to be presented to the Commission.

In the Offer, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, BISYS agreed to consent to the entry of the Order, without admitting or denying the findings contained therein (other than those relating to the jurisdiction of the Commission, which are admitted). In the Order, the Commission will make findings that, in connection with arrangements between BISYS and mutual fund advisers, BISYS aided and abetted certain mutual fund advisers’ improper use of fund assets for marketing and other expenses incurred by the advisers. Specifically, the Order will find that BISYS entered into side agreements obligating BISYS to rebate a portion of its administration fee to the funds’ advisers so that the fund advisers would continue to recommend BISYS as an administrator to the fund board of trustees. The Order will find further that, from July 1999 to June 2004, BISYS provided over \$230 million from its administration fees for the benefit of the funds’ advisers or third parties pursuant to these side agreements.

The Order will also find that BISYS willfully aided and abetted and caused: the advisers’ violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser; the advisers’ violations of Section 34(b) of the Investment Company Act, which prohibits making any untrue statement of a material fact in any registration statement; and the mutual funds’ violations of Section 12(b) of the Investment Company Act and Rule 12b-1(d) thereunder, which provides that any person who is a party to any agreement with a mutual fund relating to a written plan describing all material aspects of the proposed financing of the distribution of securities of which the fund is the issuer shall have a duty to furnish such information as may reasonably be necessary to an informed determination by the directors of such fund of whether such plan should be implemented or continued.

Based on these findings, the Order will order BISYS 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, Sections 12(b) and 34(b) of the Investment Company Act and Rule 12b-1(d) thereunder, to comply with the undertakings listed in the Order, and to pay disgorgement of \$9,698,835, with prejudgment interest thereon of \$1,703,981.66, and a civil money penalty of \$10 million.

BISYS Group is a publicly traded company listed on the New York Stock Exchange and is a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”). BISYS is a wholly-owned subsidiary of BISYS Group and is registered with the Commission as a transfer agent. BISYS Group is currently the only issuer parent of BISYS.

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DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.¹ As part of its reform, the Commission added a new category of issuer, *i.e.*, a well-known seasoned issuer, that will be permitted to benefit to the greatest degree from the changes to the rules governing the offering process. The Commission defined a well-known seasoned issuer as an issuer that is required to file reports pursuant to Section 13(a) or Section 15(d) of the Exchange Act and that satisfies other requirements, including the requirement that the issuer not be an ineligible issuer. The Commission also adopted rules permitting the use of free-writing prospectuses in registered offerings by issuers, including, but not limited to, well-known seasoned issuers and other offering participants. Pursuant to Securities Act Rules 164 and 433, an issuer may use a free-writing prospectus only if it is not an ineligible issuer.

Securities Act Rule 405 makes an issuer ineligible when, among other things:

- (vi) Within the past three years (but in the case of a decree or order agreed to in a settlement, not before December 1, 2005), the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that:
 - (A) Prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws;
 - (B) Requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or
 - (C) Determines that the person violated the anti-fraud provisions of the federal securities laws.

Securities Act Rule 405 also authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an

¹ Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

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ineligible issuer.” The Commission delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.²

BISYS Group therefore requests that the Commission or its delegate determine that it is not necessary for BISYS Group to be considered an ineligible issuer, now or in the future, on the following grounds:

1. BISYS and the staff of the Division of Enforcement had agreed in principle to a settlement before December 1, 2005 (the effective date of Securities Act Rule 405). We understand that the Division of Enforcement concurs.

2. Under such circumstances, BISYS should be treated as if it were the subject of an order agreed to in a settlement before December 1, 2005. Accordingly, there is good cause to determine that BISYS Group should not be considered an “ineligible issuer” within the meaning of Securities Act Rule 405.³

In light of the foregoing, BISYS Group believes that any determination that the anticipated Order will render it an ineligible issuer would be unwarranted, contrary to the public interest, and unnecessary for the protection of investors and that BISYS Group has shown good cause for a determination by the Commission, or its delegate, that it will not be deemed to be an ineligible issuer upon issuance of the anticipated Order.

Accordingly, BISYS Group respectfully urges the Commission, or its delegate, pursuant to Securities Act Rule 405 or Rule 30-1(a)(10), to determine, effective upon issuance of the Order, that it is not necessary that BISYS Group be considered an ineligible issuer for any purpose under the Commission rules. BISYS Group has not previously sought or obtained such relief.

² Rule 30-1 provides in relevant part that “[p]ursuant to the provisions of Public Law No. 87-592 . . . , the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Division of Corporation Finance to be performed by him or under his direction by such person . . . as may be designated from time to time by the Chairman of the Commission: [Securities Act Functions] (a) With respect to registration of securities pursuant to the Securities Act . . . (10) To authorize the granting or denial of applications, upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer as defined in Rule 405.” 17 C.F.R. § 200.30-1(a)(10).

³ See MetLife, Inc., SEC No Action Letter (Feb. 21, 2006).

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If you have any questions regarding this request, please contact me at the above-listed number or Kevin McEnery at 202/663-6596.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Eckert", with a long horizontal flourish extending to the right.

Paul R. Eckert

cc: Todd S. Brilliant, Esq.
Pacific Regional Office, U.S. Securities and Exchange Commission

Joseph D. Dansky, Esq.
BISYS Fund Services, Inc.