

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2252 Filed 1-29-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23662; 812-10916]

The Victory Portfolios, et al.; Notice of Application

January 25, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit The Victory Portfolios to deposit uninvested cash balances in joint accounts investing in short-term investments, and to permit Key Trust Company of Ohio, N.A. ("Key Trust") to accept fees for acting as securities lending agent.

Applicants: The Victory Portfolios (consisting of Victory Balanced Fund, Victory Convertible Securities Fund, Victory Diversified Stock Fund, Victory Established Value Fund, Victory Federal Money Market Fund, Victory Financial Reserves Fund, Victory Fund for Income, Victory Government Mortgage Fund, Victory Gradison Government Reserves Fund, Victory Growth Fund, Victory Institutional Money Market Fund, Victory Intermediate Income Fund, Victory International Growth Fund, Victory Investment Quality Bond Fund, Victory Lakefront Fund, Victory LifeChoice Conservative Investor Fund, Victory LifeChoice Growth Investor Fund, Victory LifeChoice Moderate Investor Fund, Victory Limited Term Income Fund, Victory National Municipal Bond Fund, Victory New York Tax-Free Fund, Victory Ohio Municipal Bond Fund, Victory Ohio Municipal Money Market Fund, Victory Ohio Regional Stock Fund, Victory Prime Obligations Fund, Victory Real Estate Investment Fund, Victory Special Growth Fund, Victory Special Value Fund, Victory Stock Index Fund, Victory Tax-Free Money Market Fund, Victory U.S. Government Obligations Fund, Victory Value Fund (each a "Fund")), Key Asset Management Inc. ("KAM"), and Key Trust.¹

¹ Applicants request that the relief apply to all existing and future series of The Victory Portfolios and any other registered management investment companies for which KAM or any entity

Filing Dates: The application was filed on December 22, 1997, and amended on October 5, 1998, and on December 14, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 18, 1999, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 3435 Stelzer Road, Columbus, OH 43219.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942-0562, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street NW, Washington, DC 20549 (tel. 202-942-8090).

Applicant's Representations

1. The Victory Portfolios is an open-end management investment company registered under the Act, currently consisting of thirty-two Funds. KAM is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as investment adviser to the Funds. Both KAM and Key Trust are subsidiaries of KeyCorp.

2. All of the Funds are authorized by their investment policies to invest in short-term liquid assets including repurchase agreements, United States government securities, or other short-term debt obligations. The investment objectives, policies and restrictions of most Funds permit them to engage in securities lending transactions. No Fund

controlling, controlled by, or under common control with KAM acts as investment adviser. Each existing registered management investment company that currently intends to rely on the requested order has been named as an applicant. Any other existing or future registered investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

will engage in securities lending unless so permitted.

3. Applicants propose to deposit uninvested cash balances of participating Funds ("Participants") that remain at the end of the trading day and/or cash for investment purposes ("Uninvested Cash") into one or more joint accounts (the "Joint Investment Account"). Applicants also propose to deposit the cash received as collateral in a securities lending transaction ("Cash Collateral") in a joint account ("Joint Collateral Account", together with the Joint Investment Account, the "Joint Accounts").

4. The Joint Accounts will be established at Key Trust, the Funds' custodian, and the daily balance of the Joint Accounts will be invested in the following short-term investments: (a) Repurchase agreements that are collateralized fully within the meaning of rule 2a-7 under the Act;² (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" within the meaning of rule 2a-7 under the Act (collectively, "Short-Term Investments").

5. Applicants also propose to permit Key Trust to act as the Funds' securities lending agent, to invest the Cash Collateral at the direction of KAM in Short-Term Investments, and to enter into a fee splitting arrangement with the Funds whereby Key Trust would receive a fee based on a percentage of the net returns generated by the lending transactions. Under the proposed arrangement, Key Trust would receive a pre-negotiated percentage of the net earnings on the investment of the Cash Collateral.

6. A Participant's decision to use a Joint Account would be based on the same factors as its decision to make any other Short-Term Investment. Key Trust, at the direction of KAM, would be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of Participants. KAM (or Key Trust at KAM's direction) would manage investments in the Joint Accounts in essentially the same manner as if it had invested in the instruments on an individual basis for each Participant. All purchases through

² Applicants will not invest in hold-in-custody repurchase agreements.

the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral in connection with securities lending activities.

7. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions would comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the Commission sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts would comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from participating in any joint arrangement or profit-sharing plan with the investment company unless the SEC has issued an order authorizing the arrangement. In passing on such applications, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which that participation is on a basis different from, or less advantageous than, that of other participants.

2. Section 2(a) (3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, controlled by, or under common control with such investment adviser. Applicants state that the Funds may be deemed to be affiliated persons of each other because they are under the common control of KAM. Applicants further state that KAM and Key Trust may be deemed to be under the common control of KeyCorp, and Key Trust therefore may be deemed an affiliated person of an affiliated person of the Funds.

3. Applicants state that the Participants, by participating in the proposed Joint Accounts, and Key Trust, managing the proposed Joint Accounts, could be deemed "joint participants" in a transaction within the meaning of section 17(d) of the Act. Applicants

further state that the proposed Joint Accounts also could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d-1. In addition, applicants state that the Funds' securities lending fee arrangement with Key Trust may be deemed a joint enterprise or profit sharing plan within the meaning of rule 17d-1.

4. Applicants state that the proposed operation of the Joint Accounts, and Key Trust's activities as securities lending agent, are consistent with the standards of section 17(d) and rule 17d-1 under the Act. Applicants also assert that Key Trust is the most advantageous choice for the Funds to use as lending agent because, as the Funds' custodian, it can administer the lending program efficiently.

5. Applicants state that Participants may earn a higher rate of return on investments through the Joint Accounts. Applicants also state that the Joint Accounts may increase the number of dealers and issuers willing to enter into Short-Term Investments with Participants. Applicants assert that no Participant would be in a less favorable position as a result of participating in the Joint Accounts. Each Participant's liability on any Short-Term Investment would be limited to its interest in such investment; no Participant would be jointly liable for the investments of any other Participant.

6. Applicants agree to implement the following procedural safeguards to ensure that the fee arrangement and other terms governing the Funds' relationship with Key Trust, as lending agent, will be fair:

(a) In connection with the approval of Key Trust as lending agent to a Fund and implementation of the proposed fee arrangement, a majority of the board of trustees (the "Board") (including a majority of the trustees who are not "interested persons" of the Funds within the meaning of section 2(a)(19) of the Act (the "Disinterested Trustees")), will determine that (i) the contract with Key Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by Key Trust are required by the Fund; (iii) the nature and quality of the services provided by Key Trust are at least equal to those provided by others offering the same or similar services; and (iv) the fees for Key Trust's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) In connection with the approval of Key Trust as lending agent to a Fund and implementation of the proposed fee arrangement, the Board will obtain

competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(c) Each Fund's contract with Key Trust for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Trustees) makes the findings referred to in paragraph (a) above.

(d) The Board (including a majority of the Disinterested Trustees), will (i) determine at each quarterly meeting, that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) The Funds will maintain and preserve permanently in an easily accessible place a written copy of the conditions and procedures (and any modifications thereto) described in the application or otherwise followed in connection with lending securities and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

Joint Accounts

1. The Joint Accounts would not be distinguishable from any other accounts maintained by Participants at their custodian, except that monies from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management of Uninvested Cash or Cash Collateral.

2. Cash in the Joint Accounts would be invested in Short-Term Investments as directed by KAM (or, in the case of Cash Collateral, Key Trust, at the direction of KAM). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a-7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a-7 under the Act.

3. All assets held in the Joint Investment Account would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant valuing its net assets in reliance on rule 2a-7 under the Act will use the average maturity of the instruments in the Joint Investment Account in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Investment Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets in the Joint Account.

6. KAM would administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its existing or any future investment advisory or sub-advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 under the Act.

8. The Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be

met. The Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. KAM and/or the custodian of each Participant will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's pro rata share of each investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with section 31 of the Act and rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (i) KAM believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. KAM may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants in the Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a-7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from

time to time) of its net assets in illiquid securities, if KAM cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition, or if such investment would otherwise be considered illiquid if held by a money market fund.

13. Not every Participant participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Participant's cash is applied to a particular Joint Account, the Participant will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with monies contributed by the Participant.

Securities Lending

14. The securities lending program of each Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

15. The approval of the Board, including a majority of the Disinterested Trustees, shall be required for the initial and subsequent approvals of Key Trust's service as lending agent for each Fund, for the institution of all procedures relating to the securities lending program of the Funds, and for any periodic review of loan transactions for which Key Trust acted as lending agent.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-2250 Filed 1-29-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40969; File No. SR-CBOE-98-23]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 Relating to an Elimination of Position and Exercise Limits for Certain Broad-Based Index Options

January 22, 1999.

I. Introduction

On June 11, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section