incurred by any separate account concerned as a result of the Reorganization.

7. Applicants assert that the Reorganization does not involve overreaching on the part of any party involved and is consistent with the general purposes of the 1940 Act. The purpose of each of the mergers involved in the Reorganization is to consolidate two identical separate accounts, both of which issue identical contracts and invest in the same underlying Funds, into a single separate account. These mergers will allow for administrative efficiencies and cost savings by Midland because it can consolidate its separate account operations. It will also allow owners of contracts of Investors to participate in separate accounts that have sizeable net assets.

8. Applicants represent that the Reorganization is consistent with the policy of each separate account as set forth in its registration statement. Because the assets of the Investors Separate Accounts will continue to be invested in shares of one or more portfolios of the Funds after the Reorganization, the assets underlying all of the various contracts will continue to be invested in accordance with the investment policies recited in their respective registration statements.

9. Applicants represent that the Midland Separate Accounts will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses pursuant to Rule 12b–1 of the 1940 Act, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan pursuant to Rule 12b–1.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the investment policies of the Midland Separate Accounts and the Investors Separate Accounts as recited in their registration statements, are consistent with the general purposes of the 1940 Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31332 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22366; 812–10166]

The Victory Portfolios, et al.; Notice of Application

December 3, 1996.

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

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Victory Portfolios, SBSF Funds, Inc. dba the Key Mutual Funds (the ''Key Mutual Funds'') (collectively, the ''Funds''), and KeyCorp Mutual Fund Advisers, Inc. (''Key Advisers'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from the provisions of section 15(a) of the Act and rule 18f–2 thereunder, and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''1934 Act''), items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A, item 3 of Form N–14, item 48 of Form N–SAR, and sections 6–07.2(a), (b), and (c) of Regulation S–X.

SUMMARY OF APPLICATION: Applicants seek an order permitting Key Advisers, as investment adviser to the Funds, to enter into subadvisory contracts with sub-advisers without receiving prior shareholder approval, and the Funds to disclose only aggregate sub-advisory fees for each series in their prospectuses and other reports.

FILING DATE: The application was filed on May 23, 1996, and amended on September 16, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

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 December 30, 1996 and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: The Victory Portfolios and Key Mutual Funds, 3435 Stelzer Road, Columbus, OH 43219–3035; Key Advisers, 126 Public Square, Cleveland, OH 44114–1306.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Victory Portfolios, a Delaware business trust, and Key Mutual Funds, a Maryland corporation, are open-end management investment companies registered with the SEC under the Act. Each Fund currently has one or more investment series (''Series'') with different investment objectives and policies.[1]

2. The Funds plan to establish new Series, each structured as a ''fund of funds'' that will invest in shares of one or more other mutual funds beyond the limits in section 12(d)(1) of the Act. On May 20, 1996, applicants filed an application for exemptive relief from sections 12(d)(1) and 17 of the Act to implement and operate these funds. A ''fund of funds'' may invest in an underlying fund that is relying on the order requested in the immediate application.

3. Key Advisers, an Ohio corporation, is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). It is a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc., which is a wholly-owned subsidiary of KeyBank National Association, which is a wholly-owned subsidiary of KeyCorp. Under its current investment advisory agreement with The Victory Portfolios (the ''Current Agreement''), Key Advisers is responsible for conducting investment research and supervision and for the purchase and sale of investments. Under the Current Agreement, Key Advisers may delegate

[1] Applicants also request relief with respect to any future open-end management investment company advised by Key Advisers.

a portion of its responsibilities to a sub-adviser.

4. Key Advisers has entered into an investment sub-advisory agreement with its affiliate, Society Asset Management, Inc., on behalf of each Series of The Victory Portfolios except the Fund for Income Series and the Special Growth Fund Series. With respect to the day-to-day management of each of the Series, Society, under the sub-advisory agreement, makes decisions concerning, and places all orders for, purchases and sales of securities. The sub-advisory agreement does not result in the payment of additional fees by The Victory Portfolios.

5. Key Advisers currently serves as the investment adviser to two funds of the Key Mutual Funds that have recently commenced operations. Spears, Benzak, Salomon & Farrell, Inc. (''SBSF''), a New York corporation that is registered with the SEC as an investment adviser under the Advisers Act, currently serves as the investment adviser to the other four funds of the Key Mutual Funds. It is anticipated that the directors and shareholders of the Key Mutual Funds will be asked to approve Key Advisers as investment adviser to the Key Mutual Funds. The Key Mutual Funds will not rely on the requested relief until it receives the necessary shareholder approval and key Advisers becomes the investment adviser.

6. Key Advisers intends to adopt a ''manager of managers'' approach with respect to one or more existing or future Series of the Funds (''Participating Series''). Under this approach, Key Advisers would employ one or more investment advisers (''Money Managers'') to exercise investment discretion over the various asset classes in which the participating Series invest. Key Advisers would enter into a portfolio management agreement with each Money Manager (a ''Portfolio Management Agreement''). Each Portfolio Management Agreement would provide, among other things, that the Money Manager would be responsible for continuously reviewing, supervising, and administering the relevant Participating Series' investment program with respect to the portion of the Participating Series' assets assigned to it.

7. Subject to shareholder approval, each Participating Series would enter into an investment advisory agreement with Key Advisers (''Investment Advisory Agreement'') that would authorize the ''manager of managers'' approach. Under the Investment Advisory Agreement, Key Advisers would: (a) determine the asset classes in which Participating Series would invest; (b) evaluate and select Money Managers; (c) perform internal due diligence on prospective Money Managers and thereafter monitor Money Managers' performance through quantitative and qualitative analysis as well as in person, telephonic, and written consultations; (d) determine the percentage of assets to be managed by a particular Money Manager; (e) supervise compliance with the investment objectives and policies of each Participating Series; (f) authorize a Money Manager to engage in certain investment techniques for a Participating Series; (g) recommend to the boards of directors of the Funds (the ''boards'') whether Portfolio Management Agreements should be renewed, modified, or terminated; (h) recommend to the Boards the addition of new Money Managers as it deems appropriate; and (i) provide overall management and supervision of the Funds' operations.

8. In return for providing the services described in paragraph 7 above, Key Advisers would receive a fee from each Participating Series, computed as a percentage of net assets. Under the ''manager of managers'' approach, Key Advisers would pay the Money Managers out of this fee. The prospectus of each Participating Series will disclose the aggregate amount of the investment advisory fee paid to Key advisers, rather than the sub-advisory fees paid to individual Money Managers.

9. Except as discussed in the next sentence, applicants request an order permitting Key Advisers to enter into and materially amend Portfolio Management Agreements with Money Managers without obtaining shareholder approval. Key Advisers will not enter into a Portfolio Management Agreement with a Money Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the participating Series or Key Advisers other than by reason of serving as Money Manager of the Series (an ''Affiliated Money Manager''), without such agreement being approved by the shareholders of the applicable Participating Series.

10. Applicants also request an exemption from the disclosure provisions described below that may be deemed to require disclosure of fees paid to each Money Manager.

11. Form N–1A is the registration statement used by open-end management investment companies to register under the Act and to register their securities under the Securities Act of 1933 (the ''1933 Act''). Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A, taken together, may be deemed to require the Participating Series to disclose compensation paid to the investment company's investment adviser and the method of computing the fee.

12. Item 3 of Form N–14, the registration form for business combinations involving mutual funds, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' in item 2 of Form N–1A.

13. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the 1934 Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a tale of the current and pro forma fees using the format prescribed in item 2 of Form N–1A. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' the ''terms of the contract to be acted upon,'' and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers.

14. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to investment advisers.

15. Regulation S–X sets forth the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and the 1933 Act. Sections 6–07.2(a), (b), and (c) of Regulation S–X may be deemed to require that the Funds' financial statements contain information concerning fees paid to the Money Managers.

16. Applicants request an exemption to permit each Participating Series of the Funds to disclose (both as a dollar amount and as a percentage of a Participating Series' average daily net assets) only: the total advisory fee that Key Advisers is paid by each Participating Series, the aggregate fees that Key Advisers pays to all Money Managers managing the assets of each Series, and the net advisory fee retained by Key Advisers for its services

provided to each Participating Series after Key Advisers pays the Money Managers (collectively, ''Aggregate Fees''). If a Participating Series employs an Affiliated Money Manager, the Participating Series will provide separate disclosure of any fees paid to such Affiliated Money Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which has been approved by the vote of a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants assert that relief from section 15(a) and rule 18f–2 should be granted because the Participating Series will be operated in a manner so different from that of conventional investment companies that shareholder approval of advisory contracts would not serve any meaningful purpose. Applicants contend that, by investing in a Participating Series, shareholders, in effect, will hire key Advisers to manage the Participating Series' assets by using its proprietary investment adviser selection and monitoring process rather than by hiring its own employees to manage assets directly. Applicants argue that shareholders will expect that Key Advisers, under the overall authority of the board, will take responsibility for overseeing Money Managers and recommending their hiring, termination, and replacement.

3. Applicants contend that the requested relief also will benefit shareholders by enabling the Participating Series to operate in a less costly and more efficient manner. Applicants argue that the requested relief will reduce expenses because a Participating Series will not have to prepare and solicit proxies each and every time a Portfolio Management Agreement is entered into or materially modified. Applicants believe that the requested relief also will enable a Participating Series to hire, terminate, and replace Money Managers more efficiently. Applicants also contend that the requested relief will relieve shareholders of the very responsibility that they are paying Key Advisers to assume: the selection, termination, and compensation of Money Managers. Finally, applicants assert that several of the conditions in the application are designed to protect shareholder interests through careful Board oversight of the Participating Series and their arrangements with Key Advisers and the Money Managers.

4. Applicants argue that, under the manager of managers approach, disclosure of fees paid to Money Managers would not serve any meaningful purpose since investors will pay Key Advisers to retain and compensate the Money Managers. Applicants also contend that many Money Managers charge their customers for advisory services according to a ''posted'' fee schedule. Applicants note that, while Money Managers may be willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Thus, applicants contend that the requested disclosure relief may encourage Money Managers to negotiate lower advisory fees with Key Advisers, the benefits of which ultimately may be passed on to shareholders.

5. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that their request satisfies these standards.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Before a Participating Series may rely on the order requested herein, the operation of the Participating Series in the manner described in the application will be approved by a majority of each Participating Series' outstanding voting securities, as defined in the Act, or, in the case of a newly-created Participating Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole shareholder before offering shares of the Participating Series to the public.

2. The prospectus for each Participating Series will disclose the existence, substance, and effect of the order. In addition, each Participating Series will hold itself out to the public as employing the ''manager of managers'' approach described in the application. The prospectus and any sales materials or other shareholder communications relating to the Participating Series will prominently disclose that Key Advisers has ultimate responsibility for the investment performance of the Participating Series due to its responsibility to oversee Money Managers and recommend their hiring, termination, and replacement.

3. Within 60 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Portfolio Management Agreement, Key Advisers will furnish shareholders all information about the new Money Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order with respect to the disclosure of fees paid to the Money Managers. Such information will include disclosure of the Aggregate Fees and any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in a Participating Series' Portfolio Management Agreement. To meet this obligation, within 60 days of the hiring of a new Money Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, Key Advisers will provide shareholders with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the 1934 Act. The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act, except as modified by the order with respect to the disclosure of fees paid to the Money Managers.

4. Key Advisers will not enter into a Portfolio Management Agreement with any Affiliated Money Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Participating Series.

5. At all times, a majority of each Fund's Board will not be ''interested persons'' of the Funds within the meaning of the Act (''Non-interested Trustees''), and the nomination of new or additional Non-interested Trustees will be placed within the discretion of the then existing Non-interested Trustees.

6. When a Money Manager change is proposed for a Participating Series with an Affiliated Money Manager, the Funds' trustees, including a majority of Non-interested Trustees, will make a separate finding, reflected in that Fund's board minutes, that such change is in the best interest of the Participating Series and its shareholders and does not involve a conflict of interest from which Key Advisers or the Affiliated Money Manager derives an inappropriate advantage.

7. Separate counsel knowledgeable about the Act and the duties of Non-

interested Trustees will be retained to represent each Fund's Non-interested Trustees. The selection of such counsel will be placed within the discretion of the Non-interested Trustees.

8. Key Advisers will provide each Fund's Board no less frequently than quarterly with information about Key Advisers' profitability for each Participating Series relying on the relief requested in the application. Whenever a Money Manager to a particular Participating Series is hired or terminated, Key Advisers will provide the Fund's Board with information showing the expected impact on Key Advisers' profitability, and quarterly reports will reflect the impact on profitability of the hiring or termination of Money Managers during the quarter.

9. Key Advisers will provide general management and administrative services to the Participating Series and, subject to board review and approval, will: (a) set the Participating Series' overall investment strategies, (b) recommend Money Managers, (c) allocate and, when appropriate, reallocate the Participating Series' assets among Money Managers, (d) monitor and evaluate Money Manager performance, and (e) oversee Money Manager compliance with the Participating Series' investment objective, policies, and restrictions.

10. No director, trustee, or officer of the Funds or Key Advisers will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Money Manager except for: (a) ownership of interests in Key Advisers or any entity that controls, is controlled by, or is under common control with Key Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Money Manager or an entity that controls, is controlled by, or is under common control with a Money Manager.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31335 Filed 12–9–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38012; File No. SR–CBOE–96–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Collection of Commission Income by an Non-Executing Floor Broker and Pooling of Floor Brokerage

December 3, 1996.

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 October 21, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Chicago Board Options Exchange, Incorporated proposed to delete Rule 6.25, Pooling of Floor Brokerage, and Rule 14.6, Collection of Floor Brokerage. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. *Purpose*

The purpose of the proposed rule change is to delete two rules, Rule 6.25 and Rule 14.6, which place limitations on the conduct of a floor brokerage business on the floor of the Exchange. The Exchange believes that these rules are now no longer necessary to achieve their original purpose, *i.e.*, to ensure that customer orders are handled with due diligence, in light of the adoption of rules which specifically govern floor broker behavior and in light of changes in the industry over the last twenty years since these rules were adopted.

Rule 6.25

Rule 6.25, Pooling of Floor Brokerage, prohibits a member organization that has one or more floor brokers who are nominees of or whose memberships are registered for the member organization to enter into any agreement, arrangement, or understanding with another such organization whereby such organizations are to handle floor brokerage for each other. The rule 6.25 prohibition does not apply to the handling of floor brokerage by one such firm for another on an occasional basis or to an arrangement permitted by the Equity Floor Procedure Committee in writing. Buy its terms, the Rule also does not prohibit an independent floor broker from handing floor brokerage for a member organization.

Both Rule 6.25 and Rule 14.6 were adopted at the infancy of the Exchange in a very different environment than exists now. The adoption of these rules was a simple method to ensure that floor brokers provided good service to their customers. Rule 6.25 was intended to prevent the larger member firm organizations from dominating the floor brokerage business, thus limiting competition. A rule that prohibits a floor broker from employing the services of a member organization employing more than one floor broker, however, could severely limit that brokers ability to handle his order flow in an efficient and timely manner, particularly at those posts without an independent floor broker. The Exchange believes, therefore, that this rule might actually hinder the efficient representation of customer orders on the floor and that floor broker organizations should be given the opportunity to develop such relationships as they feel can best enable them to service their customers. According to the CBOE, deletion of Rules 6.25 and 14.6 would remove the Exchange from the business of making business determinations for the floor brokers about what type of relations can best meet their needs and allow them to best service their customers.

Rule 14.6

Rule 14.6, Collection of Floor Brokerage, requires a member who acts as a floor broker for another member to collect and retain the entire brokerage

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

[2] 17 CFR 240.19b–4.