majority interest, or the largest interest, in a foreign telecommunications venture is often impossible.

4. Applicants state that they may participate in a foreign telecommunications venture through a ''joint venture,'' in which an applicant's interest may not be a ''security'' for purposes of the Act. However, applicants state that whether an arrangement is a joint venture is sometimes difficult to determine.

5. Applicants assert that the need to structure their participation in foreign telecommunications ventures in a manner that complies with the Act has resulted in severe constraints on their ability to operate effectively and efficiently and grow their business. Applicants state that if a Covered Entity is unable to obtain either a majority interest or primary control for purposes of section 3(a)(1)(C) or rule 3a–1, or a degree of control that will allow it to obtain an opinion of counsel that it can classify its participation as a joint venture interest, then the Covered Entity most likely will abstain from participating in that foreign telecommunications venture.

6. Applicants also state that as a venture grows out of the development stage, it will often seek to expand its businesses through acquisitions, or will seek public financing. Applicants note that these goals are often in direct conflict with the Covered Entity's need to maintain its ownership interest at a level that permits the interest to be classified as a non-investment security. Applicants submit that this can result in serious delays in the development of their foreign telecommunications ventures, as they seek to structure transactions around the requirements of the Act. Applicants state that at times, especially when the Covered Entity's interest would fall below the level of presumptive control as set forth in section 2(a)(9) of the Act, the Covered Entity may have to deny the foreign telecommunications venture permission to undertake a transaction that would have been in the best interest of the Covered Entity and that venture.

7. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) to permit applicants and the other Covered Entities to engage, directly or through subsidiaries, in foreign telecommunications ventures without being subject to the Act.

8. Applicants believe that the requested exemption is necessary and appropriate in the public interest. Applicants assert that their interests in the foreign telecommunications ventures, unlike the assets of investment companies, are not liquid, mobile or otherwise readily negotiable because Formus, directly or indirectly, will be actively and materially involved in the business activities of the foreign telecommunications ventures. Applicants also state that they are not a so-called ''special situation'' investment company that takes a controlling position in other issuers primarily for the purpose of making a profit in the sale of the controlled company's securities. Instead, applicants state that the Covered Entities will provide active developmental assistance for the purpose of participating in the profits from the foreign telecommunications ventures. Applicants maintain that their active developmental assistance, which requires personnel with expertise in planning, operating, managing, and providing services to a foreign telecommunications venture, requires resources far beyond those available to the manager of an investment company. Accordingly, applicants assert that the Covered Entities engage in business activities that do not entail the types of abuses that the Act was designed to address.

9. Applicants believe that the requested relief is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requirements of their business, their strategy that each Covered Entity own or hold directly or indirectly a substantial interest in a foreign telecommunications company or partnership, and their representation that each Covered Entity will provide active developmental assistance to a foreign telecommunications ventures demonstrate that none of the applicants is of the type that engages in the activities which the Act was designed to address.

Applicants' Conditions

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

1. No covered Entity that proposes to rely on the requested relief will hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. A Covered Entity may rely on the order granting the requested relief only if the manner in which it is involved in foreign telecommunications ventures does not differ materially from that described in the application.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28168 Filed 10–20–98; 8:45 am]

BILLING CODE 8010–91–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23488; 812–11312]

The Victory Portfolios and Key Asset Management, Inc.; Notice of Application

October 15, 1998.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 19940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would supersede a prior order and permit applicants to implement a ''fund of funds'' arrangement. In addition to the fund and funds investing in other funds in the same group of investment companies, the order would permit the fund of funds to invest a portion of its assets in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act. The order would also allow the funds of funds to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii).

APPLICANTS: The Victory Portfolios (''VP'') and Key Asset Management, Inc. (''KAM'').

FLING DATE: The application was filed on September 18, 1998.

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 applicant with a copy of the request, personally or by mail, Hearing requests should be received by the Commission by 5:30 p.m. on November 9, 1998 and should be accompanied by proof of service on applicant, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street N.W., Washington, DC 20549. Applicant, 3435 Stelzer Road, Columbus, Ohio 43219.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Nadya B. Roytblat, Assistant Director 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 Commission's Public Reference Branch, 450 5th Street N.W., Washington, D.C. 20549 (tel 202–942–8090).

Applicants' Representations

1. VP is a Delaware business trust registered under the Act as an open-end management investment company currently consisting of 30 portfolios. KAM, registered under the Investment Advisers Act of 1940, serves as investment adviser to VP.

2. Applicants request relief to permit certain series of VP (the ''Direct Funds'') to invest in certain other series of VP that are in the same group of investment companies as the Direct Funds (the ''Underlying Portfolios'').[1] The Direct Funds also would invest in other registered open-end management investment companies that are not part of the same group of investment companies as VP (the ''Other Portfolios'') in reliance on section 12(d)(1)(F) of the Act discussed below. With respect to a Direct Fund's investment in Other Portfolios, applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act. Applicants believe that the proposed structure of the Direct Funds will provide a consolidated and efficient means through which investors can have access to a comprehensive investment vehicle.[2]

[1] The requested order would supersede a prior order, Key Mutual Funds, et al., Investment Company Act Rel. 22486 (January 30, 1997 (notice) and 22526 (February 25, 1997) (order).

[2] Applicants also request relief for each registered open-end management investment company that currently, or in the future, is part of the same ''group of investment companies'' as the Direct Funds as defined in section 12(d)(1)(G)(ii) of the Act. All registered open-end management investment companies which currently intend to rely on the order are named as applicants. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(D) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trust in reliance on section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Direct Funds will invest in shares of the Other Portfolios, they cannot rely on the exemption from sections 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% of its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Direct Funds will invest in Other Portfolios in reliance on section 12(d)(1)(F). If the requested relief is granted, shares of the Direct Funds will be sold with a sales load that exceeds 1.5%.

4. Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1) (A) and (B) to permit the Direct Funds to invest in the Underlying Portfolios and from section 12(d)(1)(F) to permit the Direct Funds to sell shares to the public with a sales load that exceeds 1.5%.

6. Applicants state that the Direct Funds' investments in the Underlying Portfolios do not raise the concerns about undue influence that sections 12(d)(1) (A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

7. The Direct Funds will invest in Other Portfolios only within the limits of section 12(d)(1)(F). Applicants believe that an exemption from the sales load limitation in that section is consistent with the protection of investors because applicants' proposed sales load limit would cap the aggregate sales charges of the Direct Fund and the Other Portfolio in which it invests. Applicants have agreed, as a condition to the relief, that any sales charges, asset-based distribution and service fees relating to the Direct Fund's shares, when aggregated with any sales charges, asset-based distribution and service fees paid by the Direct Fund relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules'').

Section 17(a) of the Act

8. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Direct Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of KAM, or because the Direct Funds own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Direct Funds could be deemed to be principal transactions between affiliated persons under section 17(a).

9. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Direct Funds to purchase and redeem shares to the Underlying Portfolios.

11. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Direct Funds in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Direct Funds and will be consistent with the policies as set forth in the registration statement of the Direct Funds.

Applicants' Conditions

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

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Direct Funds.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engaged in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Direct Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Direct Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the boards of directors/trustees of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section (2)(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Direct Funds.

5. Each Direct Fund will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28166 Filed 10–20 –98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40550; File No. SR–CHX–98–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Inc. Relating to the Submission of Written Statements by Respondents In Disciplinary Investigations, or ''Wells Submissions''

October 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4(e)(6) thereunder,[2] notice is hereby given that on October 7, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 add interpretation and policy .01 to Rule 1 of Article XII of the Exchange's Rules to codify the Exchange's practice of permitting, but not requiring, the Exchange staff to notify persons that they are the subject of an investigative report and give those persons the opportunity to submit a written statement prior to the CHX president's review of the investigative report to determine whether charges should be brought (a so-called Wells Submission).[3]

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

[2] 17 CFR 240.19b(e)(6).

[3] The CHX notes that its disciplinary procedures are currently being amended to change the person reviewing the report from the CHX President to an Initial Determination Panel. *See* SR–CHX–96–31. Upon approval by the Commission, this new interpretation will apply to current procedures, as well as procedures existing after the approval of SR–CHX–96–31.