

correction,¹ "best rate" assurance,² and consulting with respect to gas and electric commodity purchasing³ and energy efficiency projects.⁴ Customers compensate Cadence on a fixed fee or shared savings basis. At June 30, 1999, Cadence was serving customers with operations in all 50 states.

As an "energy-related company," as defined under rule 58, substantially all of Cadence's revenues must derive, and, according to Applicants, have derived, from permissible energy-related activities carried out within the United States. However, Applicants assert that this geographical restriction imposes significant business and competitive disadvantages on Cadence, noting, among other things, that certain of Cadence's customers have locations

outside of the United States for which they would like Cadence to provide services consistent with the services Cadence provides them in the United States.

Applicants propose that Cadence be permitted to market its utility-related cost reporting and reduction services anywhere outside the United States, without restriction on the amount or proportion of revenues derived from these activities outside the United States. In connection with this proposal, Cinergy and NCE request authority to retain their ownership interests in Cadence, Cinergy-Cadence and New Century-Cadence previously acquired under rule 58. In addition, Applicants propose that this authority cover not merely the utility-related cost reporting and reduction services now in place, but include additional similar and complementary energy-related services that Cadence may develop and seek to offer to customers in future, both in the United States and abroad, provided that in no event would these future services be broader in scope than the energy management services and consulting services approved for Cinergy's nonutility subsidiary, Cinergy Solutions, Inc.⁵ Applicants further request that Cadence be granted the flexibility to provide its services directly or indirectly through one or more special-purpose subsidiaries, formed as corporations, partnerships, limited liability companies or other legal entities, as applicable business, legal, tax, accounting or strategic considerations dictate.⁶ Cinergy and NCE commit that they will not seek recovery through higher rates to customers of their utility subsidiaries for any losses or inadequate returns arising from the proposed transactions.

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

Margaret H. McFarland,

Deputy Secretary.

[FR DOC. 99-22425 Filed 8-27-99; 8:45 am]

BILLING CODE 8010-01-M

⁵ See *Cinergy Corp.*, Holding Co. Act Release No. 26662 (February 7, 1997).

⁶ Cinergy and NCE anticipate that they will meet their allocable shares of Cadence's financing needs through capital contributions or loans exempt under rules 45 and 52. In addition, Cadence may issue its securities to outside parties to finance its business in transactions exempt under rule 52. To the extent necessary, any Cinergy guarantees in respect to Cadence securities would be issued under the authority granted to Cinergy in Holding Co. Act Release No. 26984 (March 1, 1999). Likewise, any NCE guarantees in respect of Cadence securities would be issued under the authority granted to NCE in Holding Co. Act Release No. 27000 (April 7, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23962; 812-11716]

The Victory Portfolios, et al.; Notice of Application

August 23, 1999.

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

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application

Applicants seeks to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding one registered open-end management investment company and one investment adviser as applicants.

Applicants

The Victory Funds (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the "Original Funds"); Society Asset Management, Inc., Union Bank of Californian, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the "Original Advisers"); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) ("BISYS"), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury

Service Corporation) (all of the above entities collectively, the "Original Applicants"); BISYS Fund Services, Inc. ("BISYS Services"); Martindale Andres & Company, Inc. and 1st Source Bank (collectively, the "First Additional Advisers"); Eureka Funds, Performance Funds Trust, Centura Funds, Inc., (collectively, the First Additional Funds"); Sanwa Bank California, Trustmark National Bank and Centura Bank (collectively, the "Second Additional Adviser"); The Infinity Mutual Funds, Inc. (the "New Fund") and First American National Bank (the "New Adviser").

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the First Additional Advisers are also referred to as the "First Subsequent Applicants." BISYS, BISYS Services, the First Additional Funds, and the Second Additional Advisers are also referred to as the "Second Subsequent Applicants." The Original Applicants, the First Subsequent Applicants, and the Second Subsequent Applicants are also referred to collectively as the "Prior Applicants." BISYS, BISYS Fund Services Ohio, Inc., the New Fund, as the New Adviser are referred to collectively as the "New Applicants."

Filing Dates

The Application was filed on July 23, 1999.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, of 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 request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Charles H. Hire, Esq., Baker & Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT:

Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or George L. Zornada,

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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicant's Representations

1. On October 5, 1993, the Commission issued an order (the "Original Order") under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d-1, certain joint transactions in accordance with section 17(d) and rule 17d-1.¹ The Original Order permitted: (i) The non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the "First Amended Order"), by extending the relief granted in the Original Order to the First Subsequent Applicants.²

3. On September 15, 1998, the Commission issued an order that amended the Original Order for the second time (together with the First Amended Order, the "Second Amended Order"), by extending the relief granted in the Original order to the Second Subsequent Applicants.³ The Original Order, the First Amended Order and the Second Amended Order and referred to herein collectively as the "Amended Order."

4. The New Fund is an open-end management investment company registered under the Act and organized as a Maryland corporation. The New Fund currently offers (or proposes to

offer) twenty-two series, four of which are money market funds, that are advised by the New Adviser. The New Adviser is not registered under the Investment Advisers Act of 1940 (the "Advisers Act") in reliance upon the exclusion from the definition of investment adviser set forth in section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter, administrator and distributor for each of the series. BISYS Ohio, also one of the Prior Applicants, is the administrator and transfer and dividend disbursing agent for each of the series.

5. The New Applicants seek to have the exemptive relief granted under the Amended Order extend to include them so as to permit the permit the non-money market series of the New Fund which are advised by the New Adviser to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Fund which are advised by the New Adviser.⁴ The New Applicants consent to the conditions set forth in the original application and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-22373 Filed 8-27-99; 8:45 am]

BILLING CODE 8010-01-M

¹ Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

² Investment Company Act release Nos. 22636 (April 25, 1997) (notice) and 22677 (May 20, 1997) (order).

³ Investment Company Act Release Nos. 23393 (August 18, 1998) (notice) and 23436 (September 15, 1998) (order).

⁴ The requested relief also would extend to any other registered open-end management investment companies advised by the New Adviser or any person directly or indirectly controlling, controlled by, or under common control with the New Adviser, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.