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RESPONSE OF THE OFFICE OF
CHIEF COUNSEL
DIVISION OF INVESTMENT
MANAGEMENT

Our Ref. No. 95-56-CC
The Victory Funds and The
Victory Portfolios
File Nos. 811-3378, 811-4852

Your letter of January 25, 1995 requests our assurance that we would not recommend that the Commission take enforcement action if certain series of The Victory Portfolios (the "Portfolio") that are acquiring the assets and assuming the liabilities of certain series of The Victory Funds (the "Fund") use the acquired series' redemption credits under rule 24f-2 under the Investment Company Act of 1940 ("1940 Act") in calculating the registration fee owed under the Securities Act of 1933 ("1933 Act").

You state that on January 18, 1995, the trustees of the Fund and the trustees of the Portfolio agreed to merge each of the 14 series of the Fund into corresponding series of the Portfolio (the "Reorganization").[1] Seven series of the Fund will merge into existing series of the Portfolio. The other seven series of the Fund ("the Acquired Series") will merge into newly created shell series of the Portfolio ("the Acquiring Series"). Your no-action request pertains to the latter transactions only. Each Acquiring Series and its corresponding Acquired Series have the same investment objectives and policies[2] and are managed by the same or affiliated investment advisers.

Rule 24f-2 under the 1940 Act permits an open-end investment company to register an indefinite number of securities under the 1933 Act. The rule requires funds that elect to register an indefinite number of securities to file a notice every year setting forth the number and amount of securities sold in the past fiscal year. If the notice is filed within two months after the close of the fund's fiscal year, the fund pays a registration fee based on net sales, i.e., the aggregate price of the shares sold by the fund during the year, reduced by a "redemption credit" equal to the aggregate price of the shares redeemed during the year.[3]

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[1] The Reorganization is scheduled to occur on June 2, 1995 and is subject to the approval of the shareholders of each series of the Fund.

[2] Telephone conversation on March 6, 1995 between Barry A. Mendelson of the staff and Jay G. Baris, counsel for the Fund and the Portfolio.

[3] If the notice is not filed within the two-month period, the fee is based on gross sales, i.e., the aggregate price of the shares sold by the fund during the year, without deduction of the redemption credit.

In a series of no-action letters, the staff has permitted an acquiring fund to use the rule 24f-2 redemption credits of an acquired fund upon adoption of the acquired fund's registration statement pursuant to rule 414 under the 1933 Act.[4] In 1985, the staff stated that it would no longer respond to letters seeking similar relief unless they presented novel or unusual issues.[5] You contend that your letter presents a novel issue because the Acquired Series will be merged into newly created shell series of an existing fund that has its own registration statement and therefore will not assume the acquired fund's registration statement. We agree that your letter presents a novel and important issue that warrants a staff response.[6]

You believe that the treatment of redemption credits under rule 24f-2 should not depend on whether an acquired fund is merged into a newly created shell fund (as was the case in previous letters) or into a newly created shell series of an existing fund (as here). You state that the practical effect of either transaction is the same, i.e., that a new fund or series will succeed to all of the assets and liabilities of an acquired fund or series.

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[4] E.g., Lowry Market Timing Fund, Inc. (pub. avail. Feb. 8, 1985) (reorganization of a Texas corporation into a Massachusetts business trust); Delaware Fund, Inc. (pub. avail. May 5, 1983) (Delaware corporation to Maryland corporation); Colonial Option Income Fund, Inc. (pub. avail. Mar. 21, 1983) (Massachusetts corporation to Massachusetts business trust); Gradison Cash Reserves, Inc. (pub. avail. Oct. 29, 1981) (Maryland corporation to Massachusetts business trust). Under rule 414, when an issuer is merged into a shell entity (the successor) for the purpose of changing the issuer's state of incorporation or form of organization, the successor may adopt its predecessor's registration statement as its own.

[5] CIGNA Aggressive Growth Fund, Inc. (pub. avail. Feb. 15, 1985); Lowry Market Timing Fund, Inc., supra note 4.

[6] In 1987, the staff declined to respond to a no-action request with facts and issues materially identical to those presented here. Lazard Freres Institutional Fund, Inc. (pub. avail. Jan. 27, 1987). The staff noted that it previously had stated its views in this area and that Lazard's inquiry did not present a novel or unusual issue. In our view, the facts here and in Lazard are sufficiently different from the facts contained in our prior letters (see note 4 supra and accompanying text) to raise questions regarding the ability of the Acquiring Series and the Lazard funds to rely on those letters. We therefore believe it is appropriate for the staff to respond to this no-action request.

We believe that a shell series that assumes the assets and liabilities of an acquired fund should be able to use the acquired fund's rule 24f-2 redemption credits if the two funds have the same investment objectives and policies and the same or affiliated investment advisers. In those circumstances, the acquiring fund is continuing the acquired fund's business, and each shareholder of the acquired fund, immediately after the reorganization, would own the same pro rata interest in the same portfolio of securities as he or she owned immediately before the reorganization.[7] In this regard, your reorganization is similar to a reorganization involving a change in domicile or organizational form, circumstances in which the staff previously has permitted an acquiring shell fund to use the redemption credits of an acquired fund.[8]

Accordingly, we would not recommend that the Commission take enforcement action if each Acquiring Series uses the redemption credits of the corresponding Acquired Series in calculating the registration fees owed under the 1933 Act. Our position is based on the facts and representations in your letter, and different facts or circumstances might require a different conclusion.[9]

Barry A. Mendelson

Barry A. Mendelson
Senior Counsel

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[7] By contrast, when an acquired fund is reorganized into an existing fund that is not a shell, the acquired fund's shareholders receive interests in a new fund with a portfolio different from that of the acquired fund. Thus, the acquiring fund in such a reorganization generally would not be able to use the acquired fund's 24f-2 redemption credits. See Scudder Managed Reserves, Inc. (pub. avail. May 15, 1981). But see Kemper Total Return Fund (pub. avail. Feb. 6, 1995) (staff permitted acquiring funds that were not shells to use acquired funds' redemption credits because the reorganizing funds had the same investment objectives and policies, the same portfolio managers, and substantially the same portfolio securities).

[8] See, for example, the letters cited in note 4 supra.

[9] The position taken herein does not affect the staff's position that an open-end series fund may aggregate sales and redemptions of all its series sharing the same registration statement in calculating the filing fee owed the Commission under rule 24f-2. See Generic Comment Letter from Carolyn B. Lewis, Assistant Director, to Investment Company Registrants (Feb. 24, 1994) (Part I.E).

KRAMER, LEVIN, NAFTALIS, NESSEN, KAMIN & FRANKEL

919 THIRD AVENUE

NEW YORK, N.Y. 10022-3852

(212) 715-9100

ARTHUR H. AUFSES III
THOMAS D. BALLIETT
MARTIN BALSAM
JAY G. BARIS
THOMAS E. CONSTANCE
MICHAEL J. DELL
KENNETH H. ECKSTEIN
CHARLOTTE M. FISCHMAN
DAVID S. FRANKEL
MARVIN E. FRANKEL
ALAN R. FRIEDMAN
CARL FRISCHLING
ROBERT M. HELLER
PHILIP S. KAUFMAN
PETER S. KOLEVZON
KENNETH P. KOPELMAN
MICHAEL PAUL KOROTKIN
ARTHUR B. KRAMER
KEVIN B. LEBLANG
DAVID P. LEVIN
EZRA G. LEVIN
LARRY M. LOEB
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THOMAS H. MORELAND
ELLEN R. NADLER
GARY P. NAFTALIS
MICHAEL J. NASSAU
MICHAEL S. NELSON
MAURICE N. NESSEN
JAY A. NEVELOFF
MICHAEL S. OBERMAN
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HOWARD A. SOBEL
STEVEN C. TODRYS
JEFFREY S. TRACHTMAN
D. GRANT VINGOE
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E. LISK WYCKOFF, JR.

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JULES BUCHWALD
HAIG M. CASPARIAN
RUDOLPH de WINTER
MEYER EISENBERG
ARTHUR D. EMIL
SHERWIN KAMIN
MAXWELL M. RABB
JAMES SCHREIBER
RICHARD S. WEISBROAT
COUNSEL

M. FRANCES BUCHINSKY
DEBORA K. GROSSMAN
CHRISTIAN S. HERZECA
ALVIN D. KNOTT
PINCHAS MENDELSON
DAVID ROBBINS
LYNN R. SAIDENBERG
JONATHAN M. WAGNER
THOMAS R. WESTLE
SPECIAL COUNSEL

AUTOMATIC TELECOPIER
(212) 715-8000

WRITER'S DIRECT NUMBER

(212) 715-7515

ACT ICA
SECTION 7
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January 25, 1995

VIA FEDERAL EXPRESS

Securities and Exchange Commission
Division of Investment Management
450 Fifth Street, N.W.
Washington, D.C. 20549

Attention: Jack W. Murphy
Associate Director
Office of Chief Counsel

Re: The Victory Funds
(File Nos. 2-75736 and 811-3378)
The Victory Portfolios
(File Nos. 33-8982 and 811-4852)

Dear Mr. Murphy:

The Victory Funds (the "Fund") and The Victory Portfolios (the "Portfolio") are registered as no-load open-end management investment companies under the Investment Company Act of 1940 (the "1940 Act"). The Fund and the Portfolio are currently offering shares of beneficial interest to the public pursuant to continuous offerings registered under the Securities Act of 1933 (the "1933 Act"). Both the Fund and the Portfolio are organized as business trusts under the laws of the Commonwealth of Massachusetts.

As counsel for the Funds, we respectfully request that the Staff of the Division of Investment Management (the "Staff")

issue a letter stating that they would not recommend that the Securities and Exchange Commission (the "Commission") take any action with regard to the use of Rule 24f-2 redemption credits as described below, in connection with the proposed reorganization of the Fund (the "Reorganization").

I. FACTS

A. Background

The Fund currently has 14 series portfolios. Six series of the Fund and all of the series of the Portfolio are managed by Society Asset Management, Inc. ("SAMI"). The remaining eight series of the Fund (other than The Victory Foreign Markets Portfolio) are managed by Key Trust Company, an affiliate of SAMI. Key Trust Company is the Business Manager for The Victory Foreign Markets Portfolio. The Fund currently has seven trustees, six of whom are also trustees of the Portfolio.

The Portfolio currently has 21 series funds, all of which are managed by SAMI. The Portfolio currently has nine trustees, six of whom are also trustees of the Fund.

At a Special Meeting of Trustees held on January 18, 1995, the trustees of each of the Fund and the Portfolio approved an Agreement and Plan of Reorganization (individually, a "Plan" and collectively, the "Plans") with respect to each of the series of the Fund and certain series of the Portfolio. The Reorganization, subject to the approval of the shareholders of each series of the Fund voting separately, contemplates the reorganization of each of the 14 series of the Fund, into corresponding series of the Portfolio. The Reorganization is scheduled to occur after the close of business on June 2, 1995.

Under the terms of the Reorganization, the following seven series of the Fund would merge into newly-created corresponding series of the Portfolio: (1) The Victory Financial Reserves Portfolio; (2) The Victory Fund For Income Portfolio; (3) The Victory Government Bond Portfolio; (4) The Victory Institutional Money Market Portfolio; (5) The Victory National Municipal Bond Portfolio; (6) The Victory New York Tax-Free Portfolio; and (7) The Victory Ohio Municipal Money Market Portfolio. Upon the consummation of the Reorganization, shareholders of each of the above series of the Fund would receive an equal number of shares of the corresponding newly-created series of the Portfolio.

This request for no-action relief pertains only to these seven series of the Fund that will be reorganized into newly-created shell series of the Portfolio.

The remaining seven series of the Fund will merge into existing series of the Portfolio.[1]

After Reorganization (assuming approval by shareholders of each of the series of the Fund), there will be 28 series of shares of the Portfolio. Each of the series of the Portfolio would have a common investment manager, administrator and distributor. Under Massachusetts law, the seven newly-created series of Portfolio, as the survivors in the Reorganization, will succeed to all the assets and be subject to all the liabilities of the corresponding series of the Fund.

The Portfolio plans to file two registration statements on Form N-14, each containing a combined proxy statement and prospectus to be sent to the respective shareholders of each series of the Fund. The combined proxy statement and prospectus will seek shareholder approval of the Reorganization and each Plan at a special meeting of shareholders scheduled for April 28, 1995. Proxies will be solicited for the special meeting pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the "1934 Act") and Section 20(a) of the 1940 Act. The combined proxy statement and prospectus with respect to each series to be distributed in connection with such solicitations will contain all material information necessary for shareholders of each series of the Fund to make informed judgments on the approval or disapproval of the Reorganization.

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[1] The following seven series of the Fund would merge into existing series of the Portfolio: (1) The Victory U.S. Treasury Money Market Portfolio would be merged into The Victory U.S. Government Obligations Fund; (2) The Victory Short-Term Government Income Portfolio would be merged into The Victory Limited Term Income Fund; (3) The Victory Corporate Bond Portfolio would be merged into The Victory Investment Quality Bond Fund; (4) The Victory Equity Portfolio would be merged into The Victory Growth Fund; (5) The Victory Equity Income Portfolio would be merged into The Victory Value Fund; (6) The Victory Aggressive Growth Portfolio would be merged into The Victory Special Growth Fund; and (7) The Victory Foreign Markets Portfolio would be merged into The Victory International Growth Fund. Upon the consummation of the Reorganization, shareholders of each of the above series of the Fund would receive an equal number of shares of corresponding existing series of the Portfolio.

The Portfolio has filed Post-Effective Amendment No. 19 to its Registration Statement on Form N-1A on or about December 23, 1994, to create the seven new series.[2] It is expected that this Post-Effective Amendment will become effective with respect to the seven series at the time the Registration Statements on Form N-14 become effective.

The costs of the Reorganization will be borne by SAMI or its affiliates. A condition precedent to the Reorganization will be the receipt by the Fund of an opinion of counsel to the effect that the Reorganization will not result in the recognition of any gain or loss for Federal income tax purposes to the Fund or its shareholders.

In the event the Reorganization with respect to one or more series of the Fund is not approved because a required two-thirds shareholder vote is not obtained with respect to a particular series, the Fund would continue to exist as a legal entity. For this reason, in connection with the Reorganization, shareholders of the Fund will also be asked to approve a slate of trustees for a term commencing prior to the Reorganization. The proposed slate of trustees is the same as the slate of trustees of the Portfolio as will exist at the time of the Reorganization. Subject to shareholder approval, the trustees of the Fund would then be the same as the trustees of the Portfolio at the time of the Reorganization. Shareholders of the Fund will also be asked to ratify the selection of independent certified public accountants.

B. Reasons for the Reorganization

At the Special Meeting of Trustees held on January 18, 1995, the Board of Trustees of the Fund and the Portfolio separately determined, among other things, that (i) the Reorganization is in the best interests of the shareholders of each series of Fund and each series of the Portfolio, respectively; and (ii) the Reorganization will not result in the dilution of the interests of any shareholders. The Reorganization would consolidate investment management, distribution, administration, legal and compliance services and will result in the existence of a single Board of Trustees and a common investment manager for all of the series. The trustees considered, among other things, the relative benefits to the shareholders of each of the Fund and the Portfolio, that SAMI or its affiliates will pay for the cost of the Reorganization, and that for a certain period, assuming current

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[2] Post-Effective Amendment No. 19 would also create an eighth series, which will not be a part of the Reorganization.

asset levels, the overall expense ratio of each series of the Portfolio into which the series of the Fund will merge will be no greater than the lesser of (i) the gross expense ratio now currently in effect with respect to the series of the Fund, or (ii) the expense levels established pursuant to previous undertakings of SAMI.

II. LEGAL CONSIDERATIONS

The Reorganization raises an issue under the 1940 Act that has been the subject of numerous favorable no-action responses by the Staff in similar circumstances: the retention of redemption credits to which the disappearing company is entitled pursuant to Rule 24f-2 under the 1940 Act. In fact, the Staff declined to review a no-action request which presented facts similar to those herein, on the basis that the facts did not present a novel question or issue. See, e.g., Lazard Freres Institutional Fund, Incorporated (available February 26, 1987). We believe that a novel question is presented by the Reorganization insofar as the disappearing series of the Fund are being acquired by newly-created shell series of an existing registered investment company rather than newly-created shell corporations or business trusts that are not registered under the 1933 Act or 1940 Act and assume the acquired companies' registration statements. For the reasons discussed below, we believe that the Staff's conclusions in previous letters also apply to the facts presented in this letter.

The more common approach is not being used for the Reorganization simply because it will not accomplish the desired organizational goal of aligning all series portfolios into one registrant. In substance and as a matter of public policy, however, we believe there is no difference between (i) a reorganization in which an existing registered investment company is acquired by a newly-formed shell company that assumes the existing fund's registration statement and (ii) a reorganization in which a series of an existing registered investment company is acquired by a newly-created shell series of another registered investment company that assumes all the assets and obligations of the acquired fund, including those under its registration statement, as a matter of law.

Registration Fees under the 1933 Act

Rule 24f-2(c) under the 1940 Act provides that when a Rule 24f-2 Notice of an open-end investment company is filed within two months after the close of a fiscal year, the 1933 Act registration fee to be paid at the time of the filing of such amendment may be computed by reducing the maximum aggregate offering price of the securities being registered by the maximum aggregate price of the securities of the same class redeemed or repurchased by the issuer in that fiscal year (with a provision to avoid duplication of benefits under Rule 24e-2(a)). A declaration pursuant to Rule 24f-2 is currently in effect for each of the Fund and the Portfolio.

Where reorganizations have been effected by transferring assets of investment companies to newly-created shell companies, the shell companies have been permitted to adopt the disappearing companies' registration statements pursuant to Rule 414 under the 1933 Act and to succeed to its obligations and redemption credits under Rule 24f-2. See, e.g., the Lowry Market Timing Fund, Inc. (available February 8, 1985); Massachusetts Financial Development Fund, Inc. (available January 10, 1985); Frank Russell Investment Company (available December 3, 1984); Scudder Common Stock Fund, Inc. (available October 10, 1984); United States Gold Shares, Inc. (available September 17, 1984); Ivy Fund, Inc. (available March 5, 1984); Lutheran Brotherhood Money Market Fund, Inc. (available April 11, 1983); and Colonial Option Income Fund, Inc. (available March 21, 1983).

In Lazard Freres Institutional Fund, supra, the Staff was presented with issues similar to those presented in this letter. The Staff, however, declined to provide no action relief. The Staff indicated that "on a number of occasions, [it] has stated its views" on these issues. The Staff stated that it "will no longer respond to letters in this area unless they present novel or unusual issues." Although it would be reasonable to interpret the Staff's position in Lazard Freres that similar treatment would be appropriate under these circumstances, it did not specifically acknowledge that such treatment is appropriate.

We believe there is a distinction between the facts presented here and the facts presented in the previous cases where the Staff has given no-action relief. Specifically, in the instant case, each disappearing series will be merged into newly-created shell series of the existing Portfolio, which has registered the shares of those series and its other existing series. For this reason, it would be inappropriate for the Portfolio, as the surviving entity, to adopt the merged Fund's registration statement

even though, as discussed above, the surviving series of the Portfolio will, as a matter of Massachusetts law, succeed to all the assets and liabilities of the corresponding disappearing series of the Fund.

The differences in the specific facts, however, do not change the underlying analysis made by the Staff in previous letters, because the practical effect of the transaction is the same, that is, that the surviving series of Portfolio will succeed to all assets and liabilities and indeed the operations of the corresponding series of disappearing Fund. Therefore, we believe it is appropriate under the circumstances and consistent with both Rule 24f-2 and prior Staff no-action letters referred to above for the surviving series of the Portfolio to be treated as successors to the disappearing series of the Fund for all purposes of Rule 24f-2 including without limitation the "redemption credits" of the Fund.

III. CONCLUSION

In light of the foregoing, we hereby request that the Staff concur with our position by stating that they will not recommend that the Commission take action if the Reorganization is effected as outlined above and the newly-created series are treated for purposes of Rule 24f-2 under the 1940 Act as having succeeded to the obligations and redemption credits of the disappearing series of the Fund.

If you have any questions with respect to this letter or need any additional information, please call Aviva Grossman at 212-715-7514 or the undersigned at 212-715-7515.

Very truly yours,

Jay G. Baris