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February 5, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File No. S7-26-03 – Disclosure Regarding Market Timing and Selective Disclosures of Portfolio Holdings

Dear Mr. Katz:

I am submitting this comment on behalf of KeyCorp, one of the nation's largest bank-based financial services companies, with assets of more than $84 billion. Key companies provide investment management, retail and commercial banking, retirement, consumer finance and investment banking products and services to individuals and companies throughout the United States. Key's investment management subsidiary, Victory Capital Management Inc., serves as investment advisor to The Victory Portfolios, a mutual fund complex with over twenty money market, fixed income and equity mutual funds.

We appreciate the opportunity to comment on the proposed rule regarding market timing disclosures and selective disclosure of portfolio holdings. We share the SEC's concerns about the abuses that have recently surfaced in the mutual fund industry. Public confidence in the mutual fund industry is essential to maintain, and action clearly must be taken to address the problems posed by late trading, market timing and selective disclosure of portfolio information.

We support the SEC's proposal. However, we are submitting this comment letter to call your attention to problems the proposed rule would likely create with respect to trading in municipal bonds. As you know, there is no established trading market, like the NYSE or NASDAQ, for municipal bonds. Bonds are traded over-the-counter. Buyers typically search for bonds by CUSIP number or data sorts because they seek bonds of a specific maturity issued by a particular state or its political subdivisions. With no established trading market, finding particular bonds is sometimes

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like finding a needle in a haystack. Buyers would need to canvas many institutions to identify one with the particular bond sought.

In response to the absence of an established trading market in municipal bonds, institutions have developed arrangements to share lists of bonds in their customer's portfolio holdings. Recently, secure web-based sites have developed as a "bulletin board" environment for institutions to post their holdings and prospective purchasers to find particular bonds. Mutual funds typically post their entire portfolio. A fund often considers most of the securities in the portfolio to be "for sale" at any given time – a fund will sell any bond if the buyer offers the right price. These arrangements significantly assist prospective buyers and sellers to find each other in the open market and help to create greater liquidity and to lower transaction costs.

We are concerned that mutual funds will not be able to participate in these arrangements in the future. Although the proposed rules specify only that policies and procedures must be adopted and disclosed, the commentary clearly articulates the SEC's position that disclosure of portfolio holdings is permissible only when the fund has a legitimate business purpose <u>and</u> the recipients are subject to a duty of confidentiality. By taking such position, the SEC, in fact, has dictated the bounds of the policies to be adopted. In the case of municipal bonds, at least, we believe the confidentiality requirement makes the policy too restrictive.

Disclosure of municipal bond portfolios to prospective purchasers, either individually or on web sites available generally to institutional purchasers, clearly has a legitimate business purpose. Such disclosure helps to create and maintain an informal market for buyers and sellers, increases liquidity and lowers transaction costs. However, it would be impractical, and seems clearly unnecessary, to obtain confidentiality agreements from prospective purchasers. Each fund that seeks to participate in the over-the-counter market would need to obtain confidentiality agreements from all other participants. For web based sites, obtaining agreements from each user would be impossible.

Municipal bond funds have not been implicated in the abusive schemes that involve selective disclosure of portfolio information. More importantly, municipal bond portfolios are clearly not the type of securities that would lead to abusive practices or harm to fund shareholders even if disclosure of portfolio holdings occurred.

Most of the changes to be implemented under the proposed rules are well suited to address the regulatory issues that the mutual fund industry currently faces. However, we are concerned that the proposed rule takes too much of a "one size fits all" approach by effectively mandating the substance of the policies to be adopted. Confidentiality restrictions will clearly be appropriate for most instances in which a selective disclosure of portfolio holdings is made for legitimate reasons.

In the context of the municipal bond markets, however, we believe confidentiality restrictions are impractical and unnecessary. We believe a more effective approach would be to exclude disclosure of municipal bond holdings from the confidentiality restrictions if disclosure is made in connection with the offering or sale of bonds. This approach would be consistent with the purposes of the proposed rule and allow markets for municipal bonds to continue to develop.

Please feel free to contact me if you have any questions about our comments.

Very truly yours,

VICTORY CAPITAL MANAGEMENT INC.

By: Richard J. Buoncore

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