

PUBLIC

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Our Ref. No. 94-770-CC
The Victory Stock
Index Fund
File No. 811-4852

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

By letter dated November 29, 1994, you request the staff's assurance that we would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 12(d)(3) of the Investment Company Act of 1940 (the "Investment Company Act"), or Rule 12d3-1 thereunder, if The Victory Stock Index Fund (the "Fund") purchases shares of common stock issued by an affiliated person of the Fund's investment adviser.

The Fund is an open-end, diversified, management investment company. The Fund's investment objective is to match the investment performance of the Standard and Poor's 500 Composite Stock Price Index (the "Index"). KeyCorp is a bank holding company registered under the Bank Holding Company Act of 1956. KeyCorp is the indirect parent of the Fund's investment adviser, Society Asset Management, Inc. ("Asset Management"). As of December 15, 1994, KeyCorp common stock represented approximately .188% of the Index on a percentage basis, occupying the 145th largest position on the Index. KeyCorp's common stock is listed on the New York Stock Exchange. As of November 30, 1994, KeyCorp had a stock market capitalization of approximately \$5.9 billion. At that time, KeyCorp had approximately 245.9 million shares of common stock outstanding and approximately 52,390 registered shareholders. KeyCorp's common stock has been represented on the Index since March 1, 1994. Average daily trading volume for the period ended November 30, 1994, was 550,770 shares.¹ Society National Bank, a wholly-owned subsidiary of KeyCorp and the direct parent of Asset Management, serves as the Fund's custodian, shareholder servicing agent, and sub-administrator.

The Fund attempts to duplicate the capital performance and dividend income of the Index by investing primarily in the stocks that compose the Index and secondarily in Index stock futures, while minimizing transaction costs. Because the Fund attempts to duplicate the investment results of the Index, no attempt is made to manage the Fund in the traditional sense using economic, financial, and market analysis, except as discussed below in connection with the selection of substitute stocks to minimize tracking error. The Fund may hold only a representative portion of the stocks in the Index due to the illiquidity of some stocks or other factors. The Fund may compensate for the omission of certain stocks by purchasing stocks not included on the Index that are similar to those omitted if Asset Management believes those purchases will reduce "tracking error" (the difference

¹ The data in this paragraph was provided in a telephone conversation on December 16, 1994 between Edward J. Rubenstein and Francoise M. Haan.

between the Fund's investment results before expenses and that of the Index). To minimize tracking error when the Fund does not hold all stocks in the Index in proportion to their Index weighting, Asset Management may use statistical analyses in selecting stocks. For liquidity, or in connection with engaging in futures transactions, the Fund may hold cash, cash equivalents, and/or U.S. government securities.

You state that the Fund desires to purchase shares of KeyCorp common stock consistent with its policy of investing in stocks represented on the Index. The Fund would purchase KeyCorp common stock and would establish and maintain its position in KeyCorp common stock approximately in proportion to the percentage KeyCorp common stock represents on the Index. Specifically, the Fund would not purchase or sell KeyCorp common stock except in accordance with directions generated by computer models designed to match the performance of the Index. Such computer directions would provide that the Fund purchase KeyCorp common stock and establish and maintain its position in KeyCorp common stock only in approximate proportion to the percentage KeyCorp represents on the Index, any variances being due to stocks being added to or deleted from the Index before the Fund has rebalanced its portfolio in accordance with the new Index weightings. In addition, the Fund represents that any purchase of KeyCorp common stock made in reliance upon no-action relief from Rule 12d3-1(c) would be in compliance with the provisions of Rule 12d3-1(a) and (b).

Section 12(d)(3) of the Investment Company Act generally prohibits an investment company from purchasing securities issued by a broker, dealer, investment adviser, or underwriter. Rule 12d3-1 exempts purchases of these securities from the prohibitions of Section 12(d)(3) under certain circumstances. Paragraph (c) of Rule 12d3-1, however, prohibits an investment company from purchasing securities issued by its investment adviser, promoter, principal underwriter, or any affiliated person thereof. Because KeyCorp is an affiliated person of the Fund's investment adviser, the Fund's proposal falls within the prohibition of Rule 12d3-1(c).

The staff previously has issued letters under Rule 12d3-1(c) permitting an S & P 500 Index fund to purchase securities issued by an affiliated person of the fund's investment adviser or principal underwriter.² The staff's position was based on (1) the fact that the fund's investment objective was to match the performance of the S & P 500 Index,

² See Kidder Peabody Investment Trust (pub. avail. May 14, 1993); Dreyfus Index Fund, et al. (pub. avail. Mar. 31, 1992); IBM Mutual Funds, Inc. (pub. avail. May 18, 1990).

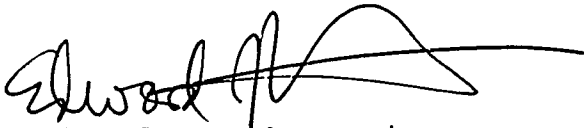
which is an unaffiliated, broad-based stock index representing 500 companies;³ and (2) the staff's view that the non-volitional nature of the index fund's purchases reduced the likelihood that the selection of the fund's portfolio securities would be made in the interest of the fund's investment adviser or principal underwriter, rather than the fund's shareholders.

Accordingly, we would not recommend that the Commission take enforcement action under Section 12(d)(3) or Rule 12d3-1 thereunder if the Fund holds KeyCorp common stock as described in your letter. This position is based on the facts and representations in your letter, particularly that:

- (1) the Fund's investment objective is to match the investment performance of the Index, which is an unaffiliated, broad-based index representing 500 companies;
- (2) the Fund will purchase KeyCorp common stock and maintain its position in KeyCorp common stock only in the approximate percentage that KeyCorp is represented on the Index; and
- (3) any purchase of KeyCorp common stock will be in compliance with Rule 12d3-1(a) and (b).

Different facts or representations may require a different conclusion. This letter expresses the Division's position on enforcement action only and does not purport to express any legal conclusions on the issues presented.

Having stated our views with respect to the ability of an index fund to make certain non-volitional purchases of securities issued by an affiliated person of the fund's investment adviser, promoter, or principal underwriter, to replicate the performance of an unaffiliated, broad-based index such as the S & P 500 Index, we will no longer respond to requests for no-action relief in this area unless they present novel or unusual issues.



Edward J. Rubenstein
Senior Counsel
Office of Chief Counsel

³ Cf. Defined Asset Funds (pub. avail. Aug. 17, 1992) (declining to take no-action position where fund would invest 10% of its assets in each of ten stocks).

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November 29, 1994

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SECTION _____
RULE 12d3-1
PUBLIC _____
AVAILABILITY 2/7/95

VIA MESSENGER

Ms. Dorothy Donohue
Associate Director
Securities and Exchange Commission
Division of Investment Management
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The Victory Stock Index Fund (formerly the Society
Stock Index Fund)

Dear Ms. Donohue:

On behalf of The Victory Portfolios (formerly The Society Funds), a Massachusetts business trust (the "Trust"), we would appreciate your advice that the staff of the Division of Investment Management (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action to the Commission under Section 12(d)(3) of the Investment Company Act of 1940, as amended (the "1940 Act"), or Rule 12d3-1 thereunder, if The Victory Stock Index Fund (the "Fund") invests in shares of common stock issued by KeyCorp as described below. This letter and the relief requested is substantially similar to the letter on behalf of the Dreyfus Index Fund (pub. avail. March 31, 1992), which received a favorable response from the Commission.

As more fully explained below, Rule 12d3-1 may be interpreted so as to prevent the Fund, which invests in stocks represented in an index that includes KeyCorp common stock, from investing in KeyCorp stock because Society Asset Management, Inc. ("Asset Management"), an indirect wholly-owned subsidiary of KeyCorp, serves as investment adviser for the Fund or for other registered investment companies. Given that purchases of KeyCorp stock by the Fund would be essentially non-volitional as it would be driven by computer models and not by individual decisions based on economic or financial analysis, we believe that the proposed purchases of KeyCorp common stock by the Fund, as

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described in this letter, are not inconsistent with Section 12(d)(3) and not contrary to the policies underlying the adoption of Rule 12d3-1.

I. Background

A. The Fund

The Society Stock Index Fund is an open-end, diversified, management investment company, known as an index fund. Its goal is to provide investment results that match the investment performance of the Standard & Poor's 500 Composite Stock Price Index ("S&P 500"). As of February 28, 1994, the Fund had net assets of \$64,572,177.

Asset Management is the investment adviser for the Fund. Society National Bank, a wholly-owned subsidiary of KeyCorp and the parent of Asset Management, serves as Custodian for the Fund. The Fund is in compliance with the requirements of Rule 17f-2 under the 1940 Act.

B. Investment Objectives and Policies of the Fund

The investment objective of the Fund is to seek to match the investment performance of the S&P 500. The Fund will attempt to duplicate the capital performance and dividend income of the S&P 500 by investing primarily in the stocks which comprise the S&P 500 and secondarily in S&P stock futures, while minimizing transaction costs. Because the Fund attempts to duplicate the investment results of the S&P 500, no attempt is made to manage the Fund in the traditional sense using economic, financial, and market analysis (except as discussed below in connection with the selection of substitute stocks to minimize tracking error). The Fund may hold only a representative portion of the stocks in the Index due to the illiquidity of some stocks or other factors. The Fund may compensate for the omission of certain stocks by purchasing stocks not included on the S&P 500 that are similar to those omitted if Asset Management believes those purchases will reduce "tracking error" (the difference between the Fund's investment results (before expenses) and that of the S&P 500). To minimize tracking error when the Fund does not hold all stocks in the S&P 500 in proportion to their index weighting, Asset Management may use statistical analyses in selecting stocks. For liquidity, or in connection with engaging in futures transactions, the Fund may hold cash, cash equivalents, and/or U.S. Government Securities.

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Because of the Fund's investment objective, securities may be purchased, retained, and sold by the Fund when such transactions would not be consistent with traditional investment criteria. Adverse performance ordinarily will not result in the elimination of a stock from the Fund's portfolio. The Fund will remain fully invested in common stocks even when stock prices are generally falling. In addition, Asset Management may eliminate one or more securities or elect not to increase the Fund's position in such securities notwithstanding the continued listing of such securities on the S&P 500 in the following circumstances: (i) the stock is no longer publicly traded, as in the case of a leveraged buyout or merger; or (ii) an unexpected adverse development occurs with respect to a company, such as bankruptcy or insolvency.

The Fund currently does not purchase KeyCorp common stock. As of March 15, 1994, KeyCorp common stock represented approximately .235% of the S&P 500 on a percentage basis, occupying the 111th largest position on the S&P 500.

C. KeyCorp and Subsidiaries

KeyCorp is a bank holding company registered under the Bank Holding Company Act of 1956, as amended, and is headquartered at 127 Public Square, Cleveland, Ohio 44114. As of March 1, 1994, KeyCorp had an asset base of approximately \$57 billion, equity capital of approximately \$4.4 billion, over 1,300 retail banking offices in 18 states from Maine to Alaska, and investment management and trust businesses in 16 states. KeyCorp's major business activities include providing traditional banking and associated financial services to consumer, business, and commercial markets. Its non-bank subsidiaries include investment advisory, securities brokerage, insurance, bank credit card processing, and mortgage leasing companies. KeyCorp's common stock is listed on the New York Stock Exchange. As of March 15, 1994, KeyCorp had a stock market capitalization of approximately \$7.9 billion. At such date, it had approximately 241.6 million shares of common stock outstanding and approximately 57,346 registered shareholders.¹ Its common stock has been represented on the S&P 500 since March 1, 1994. Average daily trading volume for the period ended March 15, 1994, was 250,000 shares.

¹ Society Corporation and KeyCorp merged on March 1, 1994. The number of registered shareholders reflects both Society Corporation and KeyCorp shareholders prior to the merger date.

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Society National Bank, a national banking association organized under the laws of the United States, is a wholly-owned subsidiary of KeyCorp and KeyCorp's lead bank subsidiary. Society National Bank serves as the Fund's Sub-Administrator, Shareholder Servicing Agent, and Custodian.

Key Brokerage Company, Inc., a subsidiary of Key Bank USA National Association, is a broker-dealer registered with the Securities and Exchange Commission under Section 15 of the Securities Exchange Act of 1934, as amended ("1934 Act").

Society Investments Inc., a subsidiary of Society National Bank, is a broker-dealer registered with the Securities and Exchange Commission under Section 15 of the 1934 Act.

Asset Management, a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc., which in turn is a wholly-owned subsidiary of Society National Bank, is registered as an investment adviser with the Commission. Asset Management has served as the investment adviser and/or subadviser to the Trust since January 1, 1993. Prior to that date, Society National Bank served as adviser and subadviser to the Trust (then known as The Emblem Fund). Asset Management advises and manages over \$17 billion in assets, and provides a full range of investment management services to personal and corporate clients.

D. Proposed Purchases of KeyCorp Common Stock

The Fund desires to purchase shares of KeyCorp common stock consistent with its policy of investing in stocks represented in the S&P 500. Purchases and sales of KeyCorp common stock would be made in accordance with the directions generated by the computer models utilized by Asset Management to assist in matching the performance of the segment represented by the S&P 500, and would not be made on the basis of any fundamental or technical analysis of, or other similar specific information concerning, KeyCorp. Thus, the Fund would purchase KeyCorp common stock and would establish and maintain its position in KeyCorp common stock approximately in proportion to the percentage KeyCorp common stock represents on the S&P 500. The Fund would not acquire KeyCorp shares except in a manner consistent with the following conditions:

1. The Fund would not purchase or sell KeyCorp stock except in accordance with directions generated by computer models designed to match the performance of the S&P 500. Such computer directions would provide that the Fund purchase KeyCorp common stock and establish and maintain its position in KeyCorp common

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stock only in approximate proportion to the percentage KeyCorp common stock represents on the S&P 500, any variances being due to stocks being added to or deleted from the S&P 500 before the Fund has rebalanced its portfolio in accordance with the new S&P 500 weightings.

2. The Fund would not effect brokerage transactions through Key Brokerage Company, Inc. or Society Investments Inc.

II. Applicable Provisions of the 1940 Act and Rules Thereunder

Section 12(d)(3) of the 1940 Act bars investment by a registered investment company in a security issued by, among other entities, an investment adviser of an investment company or an investment adviser registered under the Investment Advisers Act, such as Asset Management. Although Section 12(d)(3) does not specifically preclude investment in affiliates of these entities or the acquisition of indirect interests in these entities, it could be argued that, in many instances, effectuation of the underlying purposes of Section 12(d)(3) requires application of the Section to affiliates and indirect interests. Due to KeyCorp's indirect ownership of Asset Management, investment by the Fund in KeyCorp's common stock could be said to result in the acquisition by the Fund of indirect interests in Asset Management in contravention of Section 12(d)(3). Therefore, acquisitions by the Fund of KeyCorp common stock may be deemed to be prohibited under that Section absent a rule or order to the contrary.

III. Discussion

Rule 12d3-1(c), as recently amended, bars investments by a registered investment company in, among other persons, its adviser or principal underwriter or an affiliated person of those entities.² KeyCorp, through its indirect ownership of all of the outstanding shares of Asset Management, may be considered an affiliated person of Asset Management, the investment adviser to the Fund. Thus, the Fund would be barred from purchasing shares of KeyCorp common stock.

² In September, 1993 the Commission adopted amendments to Rule 12d3-1. See Investment Company Act Rel. No. 19716, 54 SEC Docket 2190.

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The Commission in its release adopting the recent amendments to Rule 12d3-1, addressed the issue of eliminating or amending for index funds Rule 12d3-1's prohibition on the purchase of securities of the acquiring fund's investment adviser, underwriter, promoter or their affiliated persons. 54 SEC Docket at 2193. The Commission noted that the issue was "worthy of further examination" but declined to take action in the rulemaking. Id.

Accordingly, it is our understanding that the Commission did not intend to change the standards for granting no-action relief to index funds. We therefore have premised the relief sought in this letter on two letters granting no-action relief to index funds, Dreyfus Index Fund (pub. avail. Mar. 31, 1992) and IBM Mutual Funds (pub. avail. May 18, 1990), which relief was granted pursuant to the predecessor Rule 12d3-1.

Prior to the 1993 amendments, the operation of Rule 12d3-1(c) barred investments by a registered investment company in, among other persons, its adviser or principal underwriter or an affiliated person of those entities which affiliated person itself was a "securities related business."

Subparagraph (d)(3) of Rule 12d3-1, which was deleted in the amendment process, defined a "securities related business" as "a person who directly or indirectly is a broker, a dealer, engaged in the business of underwriting, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or an investment adviser to a registered investment company."

A company could be "indirectly" a broker or investment adviser, within the meaning of "securities related business" in subparagraph (d)(3) of Rule 12d3-1, if it owned even a single share of the adviser or of a parent company of the adviser. The effect arguably would have precluded an investment company from investing in an affiliate of its adviser that directly or through intermediary companies had any ownership interest in the adviser, regardless of how much or how little of the affiliates' revenues were generated from, or its assets were represented by, the adviser of which it is an affiliate. Thus, the superseded subparagraph (c) of Rule 12d3-1, arguably precluded the Fund from investing in KeyCorp common stock since (1) Asset Management may be considered an affiliated person of KeyCorp because KeyCorp owns indirectly all of the outstanding shares of Asset Management; and (2) by virtue of its indirect ownership interest in Asset Management, KeyCorp would be deemed to be engaged in a "securities related business."

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Thus, the interpretations under both the amended and the superseded subparagraph (c) of Rule 12d3-1 would preclude an index fund whose investment adviser or principal underwriter is included in, or is affiliated with a company included in, that index, from ever achieving its investment objective -- namely, tracking the performance of a stock index -- since the fund would have to omit certain securities. However, because of the non-volitional nature of investment decisions made for the Fund, as well as the capitalization of KeyCorp and the liquidity of its common stock, the conflicts of interest that Rule 12d3-1 was apparently designed to prevent are not present. The Fund represents that any purchase of KeyCorp common stock made in reliance upon No-Action relief from Rule 12d3-1(c) would be in compliance with the provisions of Rule 12d3-1(a) and (b).

A. Adverse Impact on Ability to Achieve Investment Objective

In proposing the amendment to the predecessor Rule that ultimately was superseded by Rule 12d3-1, the Commission stated that while Section 12(d)(3) "may have been designed to protect investment companies from entrepreneurial risks, and from being managed in the interests of affiliated persons or more generally in the interests of brokers, dealers, underwriters and investment advisers, evidence indicates that today the section often prevents investment companies from making investments that may be in the best interests of their shareholders." Investment Co. Act Release No. 13,725, 29 SEC Docket at 796. Indeed, permitting the Fund to invest in KeyCorp common stock would benefit the Fund and its shareholders by facilitating the Fund's achievement of its investment objective.

B. Absence of Potential Conflicts of Interest

Section 12(d)(3) has been viewed by the Staff as designed to curtail interrelationships between investment companies and brokers, dealers, underwriters, and investment advisers, and as eliminating, in practice, potential conflicts of interest and certain reciprocal practices between investment companies and securities related businesses. 54 SEC Docket at 2191-92.

For example, an investment adviser could advise a fund to invest in the stock of an affiliate of the adviser, even if such investments were not in the fund's best interests. Another example would be a broker-dealer advising customers to invest in a particular fund because that fund invested in securities of the broker-dealer or an affiliate. None of these potential conflicts of interest could occur in this case given that the Fund is an

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index fund and purchases of KeyCorp stock by the Fund would be non-volitional.

C. Protection of Investors

In imposing the qualitative conditions contained in Rule 12d3-1 upon an investment company's acquisitions of securities of issuers engaged in securities related businesses, the Commission, in its release proposing the amendments to Rule 12d3-1, observed that, in drafting Section 12(d)(3), Congress was apparently concerned with an investment company's maintaining the liquidity of its portfolio and preventing investment companies from exposing their assets to the entrepreneurial risks of securities related businesses. Investment Company Act Rel. No. 19204, 53 SEC Docket 432, 435. "In 1940, securities related businesses, for the most part, were organized as private partnerships. By investing in such businesses, investment companies exposed themselves to potential losses which were not present in other types of investments; if the business failed, the investment company as a general partner would be held accountable for the partnership's liabilities." Id.

The Commission noted that "in light of changes in the ownership structure of most securities related businesses since 1940, the concern regarding the unusual risks of investment in such businesses is adequately addressed by prohibiting the acquisition of general partnership interests. Today, many if not most securities firms are organized not as general partnerships, but in corporate form. Aside from general partnership interests, investments in securities issued by securities related businesses need not be subject to any special standards not applicable to investments in other businesses, except to address the potential for conflicts of interest and reciprocal practices." Id. at 436.

As discussed in Section I.C. above, KeyCorp is a corporation whose common stock is listed on the New York Stock Exchange and is actively traded in the United States. As a result, the risks that prompted enactment of Section 12(d)(3) are not present.

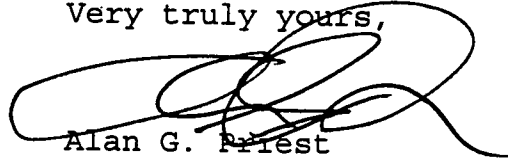
Accordingly, we believe that the proposed purchases of KeyCorp common stock by the Fund, under the conditions described above, are not inconsistent with Section 12(d)(3) of the 1940 Act and not contrary to the policies underlying the adoption of Rule 12d3-1 under the 1940 Act. We request the Staff's concurrence that it will not recommend any enforcement action if the Fund purchases KeyCorp common stock in accordance with the conditions enumerated in Section I.D.

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Should members of the Staff have any questions or comments regarding this letter, they should contact Alan G. Priest at (202) 626-3925 or Francoise M. Haan at (202) 626-3913.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be 'Alan G. Priest', written over the typed name.

Alan G. Priest

cc: Mr. Edward J. Rubenstein
Ms. Karen Haber
Eve C. Brunswick, Esq.

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