

take effective advantage of business opportunities that might arise. Investors would not receive any benefit or additional protection by requiring the company to seek exemptive relief repeatedly with respect to the issues addressed in this application.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require, among other things, that all payments received under a periodic payment plan certificate sold by a registered unit investment trust, any depositor thereof or underwriter thereof be held by a qualified bank as trustee or custodian, under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

5. The Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks under the Contracts, and represent that the mortality and expense risks charge of 1.00 percent per annum proposed for the Contracts is within the range of industry practice for comparable variable annuity products. The Applicants represent that this representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as annuity purchase rate guarantees, current levels of charges, any contractual right to increase charges above current levels, the existence of other charges, and the contractual right to make free withdrawals. The Company will maintain at its home office, and make available to the Commission, memoranda setting forth the products analyzed in the course of, and the methodology and results of, the comparative survey conducted.

6. Applicants acknowledge that the Company's revenues from the CDSC and distribution charge (if any) assessed under the Contracts could be insufficient to cover the costs of distributing the Contracts. If so, the excess distribution costs would be paid from the Company's general assets, including the profits (if any), from the mortality and expense risks charge assessed. In such circumstances, a portion of the mortality and expense risks charge might be viewed as covering a portion of the costs relating to the distribution of the Contracts.

7. The Applicants submit that, notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed

distribution financing arrangements made with respect to the Contracts will benefit VAD and the contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its service office and will be available to the Commission.

8. The Company represents that VAD will invest only in underlying mutual funds which have undertaken to have a board of directors, a majority of the members of which are not "interested persons" of that fund (within the meaning of Section 2(a)(19) of the 1940 Act), formulate and approve any plan to finance distribution expenses in accordance with Rule 12b-1 under the 1940 Act.

9. Applicants submit that, because the aggregate distribution charges (if any) and sales charges will never exceed 9 percent, Applicants will deduct no more to pay for distribution of the Contracts than is permitted by the 1940 Act and Rule 6c-8 thereunder. Because those charges will be deducted from Contract value over a period of many years, rather than from contributions to the Plans, Plan participants will have more funds available for investment than if a front-end sales charge of 9 percent were deducted.

Conclusion

The Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of a mortality and expense risks charge and/or a distribution charge under the Contracts and the future contracts funded through existing and future subaccounts of VAD meet the statutory standards of Section 6(c) of the 1940 Act. Accordingly, the Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-20811; 812-9346]

A.T. Ohio Municipal Money Fund and The Victory Funds; Notice of Application

December 29, 1994.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: A.T. Ohio Municipal Money Fund ("A.T. Ohio") and the Victory Funds (the "Fund").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from rule 24f-2 under the Act.

SUMMARY OF APPLICATION: A.T. Ohio and the Fund request an order to permit them to pay a share registration fee due under rule 24f-2 for their fiscal years ending August 30, 1994 and August 31, 1994, respectively, based on net sales, *i.e.*, new sales minus redemptions, rather than on gross sales, *i.e.*, with no credit for redemptions.

FILING DATE: The application was filed on December 7, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested parties may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 23, 1995, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 125 West 55th Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942-0570, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANTS' REPRESENTATIONS: 1. A.T. Ohio and the Fund, registered open-end investment companies, each filed declarations pursuant to rule 24f-2

under the Act to register an indefinite amount of shares under the Securities Act of 1933.

2. An investment company that has filed a declaration under rule 24f-2 must file annual notices with the SEC and pay share registration fees for shares sold in the previous fiscal year. If the rule 24f-2 notice is filed within two months after the close of the investment company's fiscal year, the amount of the registration fee is based on net sales (new sales minus redemptions) in the year in question. If the rule 24f-2 notice is not filed within two months, the registration fee is based on gross sales (with no credit for redemptions). At the latest, the rule 24f-2 notice along with the appropriate registration fee must be filed within six months after the end of an investment company's fiscal year. A.T. Ohio's fiscal year ends August 30, and the Fund's fiscal year ends August 31.

3. A.T. Ohio transferred all of its assets to the Ohio Municipal Money Market Portfolio (the "Portfolio") of the Fund on August 30, 1994. The Portfolio was established to continue the operations of A.T. Ohio as a series portfolio of the Fund. Applicants assert that there was uncertainty as to how the applicants' fees should be calculated because of the reorganization. Thus, the amounts of the registration fees were unsettled until after the New York banks were closed October 28, 1994, and applicants' administrator had to obtain a certified check in the amount of the Fund's net fee payment on October 31, 1994, the last day of the two month filing deadline.

4. A.T. Ohio and the Fund submitted their rule 24f-2 notices for the fiscal year ending August 30 and 31, 1994, respectively, to a same day courier service on October 31, 1994. Because A.T. Ohio had net redemptions during the fiscal year, no registration fee was due with the 24f-2 notice. The Fund, however, had net sales during the fiscal year. That notice, therefore, was accompanied by \$109,700.69, the fee payable to register the shares sold by the Fund in excess of redemptions. The filing arrived at the SEC's filing desk after 5:30 p.m. on October 31, 1994. As a result, the filing was made on November 1, 1994, but was rejected as having been filed too late to be eligible for a registration fee based on net sales. Thus, absent relief, applicants owe registration fees based on gross sales. For A.T. Ohio's fiscal year ending August 30, 1994, this would amount to an additional \$429,084.50 and for the Fund's fiscal year ending August 31, 1994 this would amount to an additional \$1,997.07.

Applicants' Legal Analysis

1. Section 6(c) permits the SEC to exempt any person, security, or transaction from any provisions of the Act if and to the extent the 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. In addition, the SEC must find that an investment company was not at fault to grant an exemption from the two month filing deadline of rule 24f-2.¹

2. A.T. Ohio and the Fund believe that they made a good faith effort to file the rule 24f-2 notices on a timely basis by same-day courier. Applicants state that the delay in receipt of their filings was caused by a series of delays precipitated by the same-day courier service.

3. Applicants believe that the requested relief meets the section 6(c) standards. Thus, applicants request an exemption under section 6(c) from rule 24f-2 to permit them to pay registration fees based on net sales.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35175; File No. SR-NYSE-94-49]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Six-Month Extension of the Pilot for the Capital Utilization Measure of Specialist Performance

December 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

¹ See Decision of the Comptroller General of the United States, File No. B-239769.2 (July 24, 1992).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

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 proposed rule change consists of extending for six months the pilot to use a measure of specialist performance which focuses on a specialist unit's use of its own capital in relation to the total dollar volume of trading activity in the unit's stocks. This capital utilization measure (described in detail below) would be used by the Allocation Committee ("Committee") in allocating newly-listed stocks.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In recognition of the importance of dealer participation, particularly in volatile markets when such participation is viewed as providing "value added" in maintaining fair and orderly markets, the Exchange has developed a measure of specialist performance dealing with utilization of capital for market-making. This measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.

On December 22, 1993, the Commission approved, on a pilot basis ending December 31, 1994, the Exchange's proposed rule change to adopt capital utilization as an additional measure of specialist performance.³ The Exchange is now seeking to extend that pilot for an additional six months, through June 30, 1995.

Under the pilot, a capital utilization percentage is derived for each eligible stock⁴ and the specialist unit overall by

³ See Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (File No. SR-NYSE-93-30).

⁴ The following are not included in any grouping of eligible stocks: foreign stocks, preferred stocks,