Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 29, 1997.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–2911 Filed 2–5–97; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Rel. No. IC–22486; 812–10164]**

## SBSF Funds, Inc. d/b/a Key Mutual Funds, et al.; Notice of Application

January 30, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** SBSF Funds, Inc. d/b/a Key Mutual Funds (''KMF''), The Victory Portfolios (''VP''), KeyCorp Mutual Fund Advisers, Inc. (''KMFAI''), and Spears, Benzak, Salomon & Farrell, Inc. (''SBS&F'').

**RELEVANT ACT SECTIONS:** Order requested under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. In addition to the fund of funds investing in other funds in the same group of investment companies, such fund of funds also may invest a portion of its assets in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act.

**FILING DATES:** The application was filed on May 20, 1996, and amended on January 22, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1997, and should be accompanied by proof of service on applicants 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. KMF and VP, 3435 Stelzer Road, Columbus, OH 43219; KMFAI, 127 Public Square, Cleveland, OH 44114; SBS&F, 45 Rockefeller Plaza, New York, NY 10111.

**FOR FURTHER INFORMATION CONTACT:** David W. Grim, Staff Attorney, at (202) 942–0571, or Mercer E. Bullard, 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 SEC's Public Reference Branch.

### Applicants' Representations

1. KMF is a Maryland corporation registered under the Act as an open-end management investment company currently consisting of eight operating portfolios and one inactive portfolio. VP is a Delaware business trust registered under the Act as an open-end management investment company currently consisting of 24 operating and four inactive portfolios.

2. Applicants request relief to permit the series of KMF, VP, and any other investment company created in the future that is part of the same ''group of investment companies'' as KMF or VP, as defined in section 12(d)(1)(G)(ii) of the Act (the ''Direct Funds''), to purchase shares of investment companies or series thereof, existing or created in the future, that are part of the same ''group of investment companies'' (the ''Underlying Portfolios'') as the Direct Funds, and to permit the Underlying Portfolios to sell such shares to, and redeem such shares from, the Direct Funds. Some of the Underlying Portfolios may rely upon a ''manager of managers'' exemptive order granted by the SEC that permits the Underlying Portfolios to select a sub-adviser without the approval of their shareholders, subject to certain conditions.[1]

3. The investment policies of the Direct Funds also permit each Fund to invest a portion of its assets in government securities, certain short-term obligations, and, subject to receipt of the request exemptive relief, shares of other investment companies that are not part of the same ''group of investment companies'' as KMF and VP (''Other Portfolios''). Investments in Other Portfolios will conform to the requirements of section 12(d)(1)(F) of the Act.[2]

4. SBS&F currently serves as investment adviser to four of the operating funds of KMF. SBS&F is a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc. (''KAMHI''), which is a wholly-owned subsidiary of KeyBank National Association, a national banking association, which, in turn, is a wholly-owned subsidiary of KeyCorp, a bank holding company. KMFAI currently serves as investment adviser to VP and to four funds of KMF, including the Direct Funds. In addition, KMFAI has been retained to act as investment adviser to a fund of KMF that has yet to commence operations. KMFAI is a wholly-owned subsidiary of KAMHI.

5. The Underlying Portfolios will pay investment advisory fees to KMFAI and/or SBS&F. In addition, the Underlying Portfolios will pay fees to their various service providers for all other services relating to their operations. The Direct Funds pay investment advisory fees to their investment adviser(s), as well as fees to the Direct Funds' various service providers. By investing in other investment companies, shareholders of the Direct Funds indirectly will pay their proportionate share of any Underlying Portfolio fees and expenses. Similarly, the Direct Funds' shareholders indirectly pay their proportionate share of any Other Portfolio fees and expenses.

6. The Direct Funds will pay no front-end sales loads or contingent deferred sales charges in connection with the purchase or redemption of shares of either Underlying Portfolios or Other Portfolios. In addition, sales charges, distribution-related fees, and service

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[1] *The Victory Portfolios*, Investment Company Act Release Nos. 22366 (Dec. 3, 1996) (notice) and 22432 (Dec. 31, 1996) (order).

[2] On January 1, 1997, in reliance only on section 12(d)(1)(G) of the Act, KeyChoice Growth Fund, KeyChoice Moderate Growth Fund, and KeyChoice Income and Growth Fund, the initial Direct Funds, commenced operations with investments limited to Underlying Portfolios.

fees charged in connection with shares of the Direct Funds will not exceed the limits set forth on Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (the ''NASD'') when aggregated with any sales charges, distribution-related fees, and service fees that the Direct Funds pay relating to Underlying Portfolio and Other Portfolio shares.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. Applicants state that no exemptive relief is sought with respect to investments by the Direct Funds in shares of Other Portfolios.

3. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Direct Funds will invest in shares of Other Portfolios, they cannot rely on the exemption from section 12(d)(1) (A) and (B) afforded by section 12(d)(1)(G).

4. Applicants request relief from the limitations of section 12(d)(1) (A) and (B) to the extent necessary to permit (i) the Direct Funds to purchase an unlimited amount of the outstanding voting shares of each Underlying Portfolio; (ii) the securities of each Underlying Portfolio to have an aggregate value of as much as 100% of the total assets of the Direct Funds: (iii) the Direct funds to invest up to 100% of their assets in the securities of the Underlying Portfolios; and (iv) each of the Underlying Portfolios to sell more than 10% of its total outstanding voting stock to the Direct Funds.

5. Applicants believe that the purpose of section 12(d)(1) was to limit and address the perceived adverse consequences of ''pyramiding'' of investment companies in a fund of funds arrangement, including the duplicative costs involved in such a structure, the exercise of undue influence or control over the underlying series, and the potential adverse impact of large-scale redemptions.

6. Applicants assert that the structure of applicants' fund of funds will include safeguards designed to address multiple layering of advisory fees. Applicants state that, before approving any advisory contract under section 15 of the Act, the directors of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19), will find that any advisory fees charges under the contract are based on services provided that are in addition to, rather than merely duplicative of, services provided under any Underlying Portfolio advisory contract. Applicants state further that this finding, documented in the minute books of the Direct Funds. Applicants state that the directors of the Direct Funds will make a similar finding with respect to the Other Portfolios, as well, which will be fully documented.

7. Applicants state that, to address the issue of multiple layers of sales loads, the Direct Funds will pay no front-end or contingent deferred sales charge in connection with the purchase or redemption of shares of the Underlying Portfolios, Applicants state further that, as a condition to the requested exemptive relief, any sales charges, distribution-related fees, or service fees relating to the shares of the Direct funds will not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD when aggregated with any sales charges, distribution-related fees, or service fees that the Direct Funds may pay relating to the acquisition, holding, or disposition of Underlying Portfolio or Other Portfolio shares. Applicants assert that the aggregate sales charges, therefore, will not exceed the amount that otherwise lawfully could be charged at either fund level.

8. Applicants state administrative and similar fees will be charged at the Direct Fund and Underlying Portfolio/Other Portfolio levels. However, applicants believe that the redundancy of administrative fees and expenses between the Direct Funds and the Underlying Portfolios will be minimal, because distinct services are being provided at each level. Likewise, applicants believe that distinct services will be provided at each level of the Direct Funds' investment in Other Portfolios, thus minimizing any concerns of redundancy of administrative fees and expenses. In any event, applicants believe that administrative and other expenses may be reduced at both levels under the proposed Direct Funds' structure. Thus, applicants believe that an investment in the Direct Funds should not be significantly more expensive than a direct investment in an Underlying Portfolio or Other Portfolio.

9. Applicants believe that the concern of undue influence and control is addressed by the proposed structure of the Direct Funds. Applicants assert that there is little risk that the Direct Funds' adviser will exercise inappropriate control over the Underlying Portfolios, which are part of the same ''group of investment companies.'' Applicants also contend that the Other Portfolios cannot be controlled in any meaningful way by the Direct Funds because section 12(d)(1)(F) limits them, together with their affiliates, the acquiring no more than 3% of the total outstanding stock of any Other Portfolio. In addition, applicants note that section 12(D)(1)(F) permits the Other Portfolios to reject redemption requests by a Direct Fund that exceed 1% of the Other Portfolio's total outstanding securities during any

period of less than 30 days. Applicants state that, to protect further the Underlying Portfolios and Other Portfolios from unexpected large redemptions, the Direct Funds generally will be designed for intermediate and long-term investors.

10. Applicants state that an additional concern underlying section 12(d)(1) is that the popularity of fund of funds could lead to the creation of more complex vehicles that would not serve any meaningful purpose. Applicants submit that these concerns are addressed by the fact that no Underlying Portfolio or Other Portfolio can acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (II) engage in interfund borrowing and lending transactions.

11. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants assert that the Direct Funds will provide a simple answer to investor demand for a diversified, professionally managed fund and funds, and that the structure of the Direct Funds is consistent with the public interest and the protection of investors.

12. Section 17(a) generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Applicants submit that the Direct Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of their adviser, or because Direct Funds own 5% or more of the shares of an Underlying Portfolio. Applicants state that sales by the Underlying Portfolios of their shares to the Direct Funds could be deemed to be principal transactions between affiliated persons under section 17(a)

13. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such 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. Applicants believe that relief under section 6(c) is appropriate for the reasons discussed above.

14. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to allow the transactions described above.

15. Applicants believe that the terms of the proposed arrangement are reasonable and fair and do not involve overreaching because the consideration paid for the sale and redemption of shares of Underlying Portfolios will be based on the net asset values of the Underlying Portfolios. Applicants note the investment of assets of the Direct Funds in shares of the Underlying Portfolios and the issuance of shares of the Underlying Portfolios to the Direct Funds will be effected in accordance with the investment restrictions of the Direct Funds and will be consistent with the policies as set forth in the registration statement of the Direct Funds. Applicants also believe that the proposed arrangement is consistent with the general purposes of the Act.

## Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Direct Funds.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Direct Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Direct Funds relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios (and Other Portfolios), will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the boards of directors/trustees of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Direct Funds.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–2905 Filed 2–5–97; 8:45 am]

BILLING CODE 8010–01–M

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## Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Magellan Health Services, Inc., Common Stock, 25¢ Par Value; 11.25% Series A Senior Subordinated Notes due 2004) File No. 1–6639

January 31, 1997.

Magellan Health Services, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following: