

12(d)(1)(F)(ii). Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to shares of a Fund will not exceed the limits set forth in Rule 2830 of the NASD Conduct Rules ("NASD Conduct Rules") applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges that may be imposed by a fund of funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses. Applicants also state that the Funds will incur brokerage commissions in connection with their purchase and sale of shares of closed-end funds or Exchange-Traded Funds. The commissions on such transactions will not differ from those customarily incurred in connection with the purchase and sale of comparable securities.

Applicants' Conditions

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

1. The Funds will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to shares of a Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

3. No Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund (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 Commission permitting such Underlying Fund 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.

4. Prior to reliance on the requested order, the board of directors or trustees

("Board") of each Fund, including a majority of the Board who are not "interested persons" (as defined in section 2(a)(19) of the Act) ("Disinterested Directors"), shall find that the advisory fees, if any, charged under the Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund. In addition, in connection with the approval of any investment advisory contract pursuant to section 15 of the Act subsequent to such initial determination, the Board of each Fund, including a majority of the Disinterested Directors, shall find that the advisory fees, if any, charged under the Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund.

5. The Board of each Fund will satisfy fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27183; 812-12935]

Rydex ETF Trust, et al.; Notice of Application

December 8, 2005.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The order would amend a prior order to permit principal underwriters and brokers and dealers to sell shares of certain registered open-end management

investment companies, certain of which operate as exchange-traded funds, to other registered open-end management investment companies that are not part of the same group of investment companies.¹ The order would also amend a condition in another prior order.²

APPLICANTS: Rydex ETF Trust, Rydex Series Funds, Rydex Dynamic Funds, PADCO Advisors, Inc. ("PADCO") and PADCO Advisors II, Inc. ("PADCO II").

FILING DATES: The application was filed on February 28, 2003, and amended on February 19, 2004, June 4, 2004 and September 29, 2005. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected here.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 3, 2006, 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 Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303; Applicants, 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Branch Chief, and Michael W. Mundt, Senior Special Counsel, at (202) 551-6821 (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 Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

Applicants' Representations:

1. Rydex Series Funds and Rydex Dynamic Funds (the "Original Trusts")

¹ PADCO Advisors, Inc., et al., Investment Company Act Rel. Nos. 24678 (Oct. 5, 2000) (notice) and 24722 (Oct. 31, 2000) (order) ("Original Order").

² Rydex ETF Trust, et al., Investment Company Act Rel. Nos. 25948 (Feb. 27, 2003) (notice) and 25970 (Mar. 25, 2003) (order) ("ETF Order").

and Rydex ETF Trust are open-end management investment companies registered under the Act, each of which is comprised of separate series ("Rydex Funds" or "Funds"). PADCO and PADCO II, which do business as Rydex Investments, are Maryland corporations registered as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). All Rydex Funds are, and will be, advised by PADCO, PADCO II or an entity that is controlling, controlled by or under common control with PADCO and PADCO II and is registered as an investment adviser under the Advisers Act, and are, and will be, in the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act.

2. The Commission issued the Original Order to the Original Trusts and PADCO upon their application ("Original Application") to permit registered open-end management investment companies ("Funds of Funds") that are not part of the same group of investment companies as the Original Trusts to acquire shares of the Rydex Funds beyond the limits of section 12(d)(1)(A) of the Act, and to permit the Original Trusts, and each existing and future registered open-end management investment company that is part of the same group of investment companies as the Original Trusts to sell shares beyond the limits in section 12(d)(1)(B) of the Act. The Commission issued the ETF Order to permit the series of Rydex ETF Trust ("Rydex ETF Funds") to issue shares of limited redeemability ("Rydex ETF Shares" or "Shares") that trade in the secondary market at negotiated prices.

3. Applicants request an order amending both the Original Order and the ETF Order. The requested order would amend the Original Order to (a) permit any principal underwriter of a Rydex Fund and broker or dealer ("Broker") registered under the Securities Exchange Act of 1934 knowingly to sell shares of Rydex Funds, including Rydex ETF Shares, beyond the limits set forth in section 12(d)(1)(B) to Funds of Funds and (b) modify certain terms and conditions of the Original Order. In addition, the requested order would amend a condition of the ETF Order in order to render it consistent with the relief from section 12(d)(1) granted by the Original Order as modified by the requested order.³

³ Applicants state that, except for Brokers and Funds of Funds, all parties that currently intend to rely on the requested order are named as applicants. Any other party that relies on the requested order in the future, including principal underwriters, Brokers and Funds of Funds, will comply with the

Applicants' Legal Analysis

A. Original Order

1. Section 12(d)(1)(B) prohibits any registered open-end investment company, principal underwriter or Broker from knowingly selling any security issued by an open-end investment company ("acquired company") to another investment company ("acquiring company") if the sale would cause either the acquiring company to own more than 3% of the acquired company's voting stock or investment companies generally to own more than 10% of the acquired company's voting stock. Applicants state that the Rydex Funds, including Rydex ETF Funds, are permitted under the Original Order to sell their shares to Funds of Funds in excess of the limits of section 12(d)(1)(B). However, applicants state that because Rydex ETF Shares have begun to be listed and traded on a national securities exchange, as defined in section 2(a)(26) of the Act, or on The Nasdaq Stock Market since the Original Order, Brokers are now virtually certain to be involved in sales of Rydex ETF Shares to Funds of Funds, which may require the requested relief. Accordingly, applicants seek to amend the Original Order to permit any principal underwriter and Broker knowingly to sell shares of Rydex Funds to Funds of Funds in excess of the limits prescribed by section 12(d)(1)(B).

2. Applicants also seek to clarify the Original Order in certain respects. First, applicants seek to clarify that a Fund of Funds that intends to rely on the amended order will enter into a participation agreement with the relevant Rydex Fund before exceeding any of the investment limits of section 12(d)(1)(A). Second, applicants seek to amend the Original Order to better address situations where a Fund of Funds employs an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Fund of Funds Adviser") and one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act ("Subadvisers"). Applicants state that any investment adviser to a Fund of Funds will be registered, or exempt from registration, under the Advisers Act.

3. Applicants state that their legal analysis is unchanged from that provided in the Original Application.

terms and conditions of the Original Application, as amended by this application. Applicants acknowledge that Funds of Funds may rely on the requested order only to invest in Rydex Funds and not in any other registered investment company. Applicants state that Funds of Funds do not include Rydex Funds.

Specifically, applicants state that they will continue to be, and that any principal underwriter and Brokers will be, fully subject to all of the terms and conditions of the Original Order, as amended by the requested order. Applicants posit that the proposed amendments raise no additional regulatory or investor protection concerns that are not addressed by the terms and conditions of the requested order. Applicants, therefore, contend that the previously requested relief, as it would be amended, will be (a) 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, (b) consistent with the public interest and the protection of investors, and (c) conducted on terms that are reasonable and fair and do not involve overreaching on the part of any person concerned, and consistent with the policy of each registered fund involved and with the purposes of the Act.

B. ETF Order

4. Existing condition 2 to the ETF Order provides that the prospectus ("Prospectus") and the product description ("Product Description") of each Rydex ETF Fund will disclose that Rydex ETF Shares are issued by a Rydex Fund and that the acquisition of Rydex ETF Shares is subject to the restrictions of section 12(d)(1). In light of the relief requested to permit Funds of Funds to purchase, and the principal underwriter, Brokers and Rydex ETF Funds to sell, Rydex ETF Shares in excess of the limits of sections 12(d)(1)(A) and (B), respectively, applicants seek to replace existing condition 2 with condition 14, as stated below. Condition 14 generally provides that the Funds of Funds will be alerted that they may invest in Rydex ETF Funds in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the Original Order, as amended by the requested order, including the requirement that they enter into a participation agreement with the Rydex ETF Fund regarding the terms of the investment.

Applicants' Conditions

A. Original Order

Applicants agree the conditions to the Original Order will be superseded by, and the requested order will be subject to, the following conditions:

1. (a) The Fund of Funds Adviser, (b) any person controlling, controlled by, or under common control with the Fund of Funds Adviser, and (c) any investment

company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser (collectively, the "Adviser Group") will not control (individually or in the aggregate) a Rydex Fund within the meaning of section 2(a)(9) of the Act. (a) Any Subadviser, (b) any person controlling, controlled by, or under common control with the Subadviser, and (c) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by, or under common control with the Subadviser (collectively, the "Subadviser Group") will not control (individually or in the aggregate) a Rydex Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Rydex Fund, the Adviser Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Rydex Fund, it will vote its shares of the Rydex Fund in the same proportion as the vote of all other holders of the Rydex Fund's shares. This condition does not apply to the Subadviser Group with respect to a Rydex Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Adviser, Subadviser, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a "Fund of Funds Affiliate") will cause any existing or potential investment by the Fund of Funds in shares of a Rydex Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Rydex Fund or its investment adviser(s), promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a "Rydex Fund Affiliate").

3. The board of directors of a Fund of Funds, including a majority of the disinterested directors, will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Subadviser are conducting the investment program of the Fund of

Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from a Rydex Fund or a Rydex Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Rydex Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Rydex Fund ("Board of Trustees"), including a majority of the disinterested trustees, will determine that any consideration paid by the Rydex Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Rydex Fund; (b) is within the range of consideration that the Rydex Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Rydex Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Rydex Fund) will cause a Rydex Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser or employee is an affiliated person (each, an "Underwriting Affiliate," except that any person whose relationship to the Rydex Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. The Board of Trustees, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Rydex Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Rydex Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate.

The Board of Trustees will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Rydex Fund. The Board of Trustees will consider, among other things, (i) whether the purchases were consistent with the investment objectives and policies of the Rydex Fund, (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index, and (iii) whether the amount of securities purchased by the Rydex Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of Trustees shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Rydex Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Rydex Fund exceeds the limit of section 12(d)(1)(A)(i), setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board of Trustees' determinations were made.

8. Prior to an investment in a Rydex Fund in excess of the limits in section 12(d)(1)(A), each Fund of Funds and the Rydex Fund will execute an agreement stating, without limitation, that their boards of directors and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in a Rydex Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Rydex Fund of the investment. At such time, the Fund of Funds will also transmit to the Rydex Fund a list of the names of each Fund

of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Rydex Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Rydex Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors of each Fund of Funds, including a majority of the disinterested directors, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Rydex Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. A Fund of Funds Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Rydex Fund under rule 12b-1 under the Act) received from a Rydex Fund by the Fund of Funds Adviser, or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by the Rydex Fund, in connection with the investment by the Fund of Funds in the Rydex Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from a Rydex Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Rydex Fund, in connection with the investment by the Fund of Funds in the Rydex Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of the Funds of Funds will not exceed the limits applicable to a fund of funds as set forth in rule 2830 of the NASD Conduct Rules.

12. No Rydex Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the

Act, except to the extent permitted by section 12(d)(1)(E) of the Act or an exemptive order that allows the Rydex Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

13. The board of directors of any Fund of Funds and the Board of Trustees of any Rydex Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the later of (i) the compliance date for the rule or (ii) the date on which the Fund of Funds and the Rydex Fund execute a Participation Agreement.

B. ETF Order

Applicants agree to replace condition 2 of the ETF Order with the following condition:

14. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by a Fund and the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52886; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Granting Summary Effectiveness To Request To Extend the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by The Pacific Exchange, Inc., The National Association of Securities Dealers, Inc., The American Stock Exchange LLC, The Boston Stock Exchange, Inc., The Chicago Stock Exchange, Inc., The National Stock Exchange, Inc., and The Philadelphia Stock Exchange, Inc. and To Extend Certain Exemptive Relief

December 5, 2005.

I. Introduction and Description

On December 2, 2005, the Pacific Exchange, Inc. ("PCX") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the National Stock Exchange, Inc. ("NSX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (hereinafter referred to collectively as "Participants"),¹ as members of the operating committee ("Operating Committee" or "Committee") of the Plan submitted to the Securities and Exchange Commission ("Commission") a request to extend the operation of the Plan and also to extend certain exemptive relief as described below.² The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of The Nasdaq Stock Market, Inc. ("Nasdaq") securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading

¹ PCX is the chair of the operating committee ("Operating Committee" or "Committee") for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

² See letter from Bridget M. Farrell, Chairman, OTC/UTP Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2005.