

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27958 ; 812-13387]

Rydex ETF Trust, et al.; Notice of Application

August 28, 2007

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order to amend a prior order that permits (a) an open-end management investment company comprised of multiple series based on domestic equity securities indexes (each a “Fund”) to issue shares (“Shares”) that can be redeemed only in large aggregations (“Creation Units”); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933; and (d) certain affiliated persons of the Funds to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units (“Prior Order”).¹ Applicants seek to amend the Prior Order in order to offer two new series (the “New Funds”) and future series (“Future Funds”) including Future Funds based on international equity securities indexes (collectively, this subset of Future Funds, together with the New Funds,

¹ Rydex ETF Trust, et al., Investment Company Act Release Nos. 25948 (Feb 27, 2003) (notice) and 25970 (Mar. 25, 2003) (order).

the “International Funds”).² In addition the order would delete a condition related to future relief in the Prior Order.

Applicants: Rydex ETF Trust (“Trust”), PADCO Advisors II, Inc. (“Adviser”), and Rydex Distributors, Inc. (“Distributor”).

Filing Dates: The application was filed on May 23, 2007, and amended on August 6, 2007.

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 September 24, 2007, 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 20549-1090; Applicants, 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

For Further Information Contact: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Michael W. Mundt, Assistant Director, at (202) 551-6821 (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 Public Reference Desk, U.S. Securities and Exchange

² The existing Funds, the New Funds and the Future Funds are referred to collectively as the “Funds.”

Commission, 100 F Street, NE, Washington DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is an open-end management investment company registered under the Act and is comprised of multiple Funds. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”), serves as investment adviser to each Fund. The Adviser may in the future retain one or more sub-advisers (“Sub-Advisers”) to manage particular Funds’ portfolios. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”), serves as the principal underwriter and distributor for the Funds.

2. The Trust currently offers Funds based on underlying equity income securities indexes (each an “Underlying Index”) comprised of domestic equity securities in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trust to offer the New Funds, which are based on Underlying Indexes comprised of foreign equity securities.³ The New Funds would operate in a manner identical to the existing Funds, except as described in the application (and summarized in this notice). No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of a Trust, the Adviser, any Sub-Adviser, the promoter or Distributor of a Fund.

3. Under the Prior Order, each Fund is subject to the representation that it will invest at least 90% of its assets in the component securities of its Underlying Index (“Component Securities”). Applicants request relief to amend the prior order to permit a Fund to invest at least

80% or 90% of its assets, as disclosed in the relevant prospectus, in the Component Securities of the Underlying Index.⁴ In addition, applicants request relief to permit each International Fund, for purposes of satisfying this requirement, to count certain depositary receipts (“Depositary Receipts”) that represent Component Securities as well as Component Securities. Applicants represent that each International Fund would thus invest at least 80% of its assets in the Component Securities of its Underlying Index and Depositary Receipts representing such Component Securities.⁵ Applicants state that an International Fund generally would only hold Depositary Receipts if the Adviser believed that holding the Depositary Receipts, rather than holding the Component Securities, would benefit the International Fund.

4. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the New Funds, except as specifically noted by applicants (as summarized in this notice). Applicants assert that the New Funds will operate in a manner identical to the existing Funds and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Applicants’ Legal Analysis

Section 22(e) of the Act:

³ The New Funds will seek to track the S&P International Equal Weight Index and the Russell Emerging Markets Index.

⁴ Applicants state that at all times a Fund will hold, in the aggregate, at least 80% of its total assets in Component Securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index.

⁵ Applicants state that the Depositary Receipts will be listed on a national securities exchange, as defined in section 2(a)(26) of the Act (“Exchange”) or a foreign exchange. The Adviser, Sub-Adviser and their affiliated persons will not serve as the depositary bank for any Depositary Receipts held by an International Fund.

1. In connection with applicants' request for relief to permit the operations of the New Funds, applicants seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the International Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will, under certain circumstances, require a delivery process in excess of seven calendar days for the International Funds. Applicants request relief under section 6(c) of the Act from section 22(e) in such circumstances to allow the International Funds to pay redemption proceeds up to 14 calendar days after the tender of any Creation Units for redemption. At all other times and except as disclosed in the relevant prospectus, product description, or statement of additional information ("SAI"), applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.⁶ With respect to Future Funds that are International Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

2. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert

⁶ Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each International Fund will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Fund.

Future Relief:

3. Applicants also seek to amend the Prior Order to modify the terms under which the Trust may offer Future Funds. The Prior Order is currently subject to a condition that does not permit relief for Future Funds unless applicants request and receive with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or the Future Fund could be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

4. The order would amend the Prior Order to delete this condition. Any Future Fund will: (a) be advised by the Adviser, or an entity controlled by or under common control with the Adviser; (b) track an Underlying Index that is created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trust or any Sub-Adviser or promoter of a Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

5. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order

have been appropriate for the existing Funds and would remain appropriate for Future Funds.

Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

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

Nancy M. Morris
Secretary