

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28008; 812-13232]

Fidelity Rutland Square Trust, et al.; Notice of Application

September 28, 2007

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

Action: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (“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 the Application: Applicants request an order to permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts that are within and outside the same group of investment companies.

Applicants: Fidelity Management & Research Company (“FMR”), Fidelity Management Trust Company (“FMTC”), Strategic Advisers, Inc. (“SAI”) (collectively, the “Adviser”); Fidelity Distributors Corporation (“FDC”) and National Financial Services LLC (“NFS”) (collectively, the “Distributor”); and Fidelity Rutland Square Trust (the “Trust”).

Filing Dates: The application was filed on September 6, 2005, and amended on September 27, 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 October 23, 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, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, 82 Devonshire Street, Boston, MA 02109.

For Further Information Contact: Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Michael W. Mundt, Assistant Director, 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 Desk, 100 F Street, NE, Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trust is a statutory trust organized under the laws of the state of Delaware and is registered under the Act as an open-end management investment company. The Trust currently offers three series that intend to rely on the relief requested by the application: PAS Small Cap Fund of Funds, PAS International Fund of Funds, and PAS U.S. Opportunity Fund of Funds ("PAS Funds," and each a "Fund of Funds").<sup>1</sup> Each PAS Fund operates as a fund of funds and has its own distinct investment objectives, policies and restrictions.

2. SAI currently serves as the investment adviser to each PAS Fund. FMR and SAI are investment advisers registered under the Investment Advisers Act of 1940 (the "Advisers

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<sup>1</sup> Applicants request that the order extend to each registered open-end management investment company or series thereof that is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act as the Trust (each included in the term "Fund of Funds") and advised by the Adviser or any investment adviser controlling, controlled by, or under common control with the Adviser (each included in the term "Adviser"). Each existing registered open-end management investment company that currently intends to rely on the order is named

Act”). FMTC is a “bank” within the meaning of section 202(a)(2) of the Advisers Act and, accordingly, is exempt from registration under the Advisers Act. Any future Adviser will be registered under the Advisers Act or exempt from registration. Each of FMR, FMTC, and SAI is a direct or indirect subsidiary of FMR Corp., a Massachusetts corporation. FDC and NFS are broker-dealers registered under the Securities Exchange Act of 1934 (“Exchange Act”). Each of FDC and NFS is a direct or indirect subsidiary of FMR Corp. FDC is currently the distributor of the PAS Funds.

3. Applicants request relief to permit: (a) a Fund of Funds to acquire shares of registered open-end management investment companies that are not part of the same “group of investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (the “Non-Affiliated Investment Companies”) and unit investment trusts (“UITs”) that are not part of the same group of investment companies as the Fund of Funds (“Non-Affiliated Trusts,” and together with the Non-Affiliated Investment Companies, the “Non-Affiliated Underlying Funds”); (b) the Non-Affiliated Underlying Funds, their principal underwriter and brokers and dealers registered under the Exchange Act (“Brokers”) to sell such shares to the Fund of Funds; (c) a Fund of Funds to acquire shares of certain other registered open-end management investment companies advised by the Adviser or series thereof and that are part of the same “group of investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (“Affiliated Underlying Funds,” and together with the Non-Affiliated Underlying Funds, the “Underlying Funds”); and (d) the Affiliated Underlying Funds, their principal underwriter

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as an applicant. Any other existing or future registered open-end management investment company that subsequently relies on the order will do so only in accordance with the terms and conditions of the application.

and Brokers to sell such shares to the Fund of Funds.<sup>2</sup> Certain of the Non-Affiliated Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices (“ETFs”). Each Fund of Funds also may invest in stocks, bonds, money market instruments and other securities and financial instruments that are consistent with its investment objective.

Applicants’ Legal Analysis:

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company 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 generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the

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<sup>2</sup> With regard to purchases of shares of Non-Affiliated Underlying Funds, the requested order would apply to purchases made by a Fund of Funds only to the extent that the Fund of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act.

protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit the Funds of Funds to acquire shares of the Underlying Funds and to permit the Underlying Funds, their principal underwriter and Brokers to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Non-Affiliated Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Underlying Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds may have over a Non-Affiliated Underlying Fund, applicants propose a condition prohibiting: (a) the Adviser and any person controlling, controlled by or under common control with the Adviser, any investment company or issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act, advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the "Group"), and (b) any investment adviser to a Fund of Funds within the meaning of section 2(a)(20)(B) of the Act ("Subadviser"), any person controlling, controlled by or under common control with the Subadviser, and 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”) from controlling (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 below precludes a Fund of Funds and its Adviser, Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a “Fund Affiliate”) from causing any existing or potential investment by the Fund of Funds in a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund Affiliate and the Non-Affiliated Underlying Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a “Non-Affiliated Fund Affiliate”). Non-Affiliated Underlying Funds will be prohibited from purchasing 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, Adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Subadviser, or employee is an affiliated person (each, an “Underwriting Affiliate,” except any person whose relationship to the Non-Affiliated Underlying 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. Applicants also propose a condition that once an investment by a Fund of Funds in the securities of a Non-Affiliated Investment Company exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Non-Affiliated Investment

Company, including a majority of the independent directors or trustees, will determine that any consideration paid by the Non-Affiliated Investment Company to the Fund of Funds or a Fund Affiliate Service Provider<sup>3</sup> 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 Non-Affiliated Investment Company; (b) is within the range of consideration that the Non-Affiliated Investment Company 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.

7. To further assure that a Non-Affiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and Non-Affiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that a Non-Affiliated Underlying Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment from a Fund of Funds.<sup>4</sup>

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<sup>3</sup> A "Fund Affiliate Service Provider" is the Adviser, any Subadviser, promoter or principal underwriter of the Fund of Funds, and any person controlling, controlled by or under common control with any of these entities, provided that (i) such person would reasonably be expected to be in a position to provide services of a securities-related nature (that is, investment advisory, brokerage, distribution, transfer agency, administration, participant recordkeeping or shareholder services) to a Non-Affiliated Underlying Fund, or (ii) if such person is not described by clause (i), to the actual knowledge of the Adviser, any Subadviser, promoter or principal underwriter of the Fund of Funds, such person currently has or is reasonably expected to begin having a material business relationship with a Non-Affiliated Underlying Fund.

<sup>4</sup> A Non-Affiliated Investment Company (including an ETF) would retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

8. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to approving any investment advisory contract under section 15 of the Act, the board of trustees of the Fund of Funds (the “Board”), including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act (the “Independent Trustees”), will find that the investment advisory fees charged under the Fund of Fund’s investment advisory contract 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). Applicants further state that the Adviser or Distributor will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Non-Affiliated Investment Company under rule 12b-1 under the Act) received from a Non-Affiliated Underlying Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying Fund. Applicants also state that any sales charges and/or service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (“NASD Conduct Rule 2830”), charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a funds of funds set forth in NASD Conduct Rule 2830.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring 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), except in certain circumstances identified in condition 10 below. Applicants also represent that a Fund of Funds’ prospectus and



sales literature will contain concise, “plain English” disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including its expense structure and the additional expenses of investing in Underlying Funds.<sup>5</sup>

B. Section 17(a)

10. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an “affiliated person” of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

11. Applicants state that if a Funds of Funds and an Affiliated Underlying Fund were deemed to be under common control, they would be affiliated persons of each other. Applicants also state that a Funds of Funds and an Underlying Fund might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund’s outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.<sup>6</sup>

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<sup>5</sup> Each Fund of Funds also will comply with the disclosure requirements concerning the aggregate expenses of investing in Underlying Funds set forth in Investment Company Act Release No. 27399 (June 20, 2006).

<sup>6</sup> Applicants note that a Fund of Funds investing in ETFs generally would purchase and sell shares of an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

12. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person 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.

13. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching.<sup>7</sup> Applicants note that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions:

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

1. The members of the Group will not control (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) a Non-Affiliated

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<sup>7</sup> Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund

Underlying 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 Non-Affiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Non-Affiliated Underlying Fund, it will vote its shares of the Non-Affiliated Underlying Fund in the same proportion as the vote of all other holders of the Non-Affiliated Underlying Fund's shares. This condition will not apply to the Subadviser Group with respect to a Non-Affiliated Underlying 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 section 2(a)(20)(A) of the Act (in the case of a Non-Affiliated Investment Company) or as the sponsor (in the case of a Non-Affiliated Trust).

2. No Fund of Funds or Fund Affiliate will cause any existing or potential investment by the Fund of Funds in a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund Affiliate and the Non-Affiliated Underlying Fund or a Non-Affiliated Fund Affiliate.

3. The Board of the Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the 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 Affiliate from a Non-Affiliated Underlying Fund or a Non-Affiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Non-Affiliated Investment Company exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors

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of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgement.

or trustees of the Non-Affiliated Investment Company, including a majority of the independent directors or trustees, will determine that any consideration paid by the Non-Affiliated Investment Company to the Fund of Funds or a Fund Affiliate Service Provider 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 Non-Affiliated Investment Company; (b) is within the range of consideration that the Non-Affiliated Investment Company 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 Non-Affiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Non-Affiliated Underlying Fund will purchase a security in any Affiliated Underwriting.

6. Before investing in a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Non-Affiliated Investment Company will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees 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 shares of a Non-Affiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), the Fund of Funds will notify the Non-Affiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Non-Affiliated Investment Company a list of the names of each Fund Affiliate Service Provider. The Fund of Funds will notify the Non-Affiliated Investment Company of any changes to the list of names as soon as reasonably practicable after a

change occurs. The Non-Affiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation 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.

7. Before approving any advisory contract under section 15 of the Act, the Board of the Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under the advisory contract will be based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. These findings and the basis upon which they are made will be recorded fully in the minute books of the appropriate Fund of Funds.

8. The Adviser or Distributor will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Non-Affiliated Investment Company under rule 12b-1 under the Act) received from a Non-Affiliated Underlying Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying 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 Non-Affiliated Underlying 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 Non-Affiliated Investment Company, in connection with the investment by the Fund of Funds in the Non-Affiliated Underlying 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.

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

10. 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.

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

Florence E. Harmon  
Deputy Secretary