

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24678; 812-10528]

PADCO Advisors, Inc., et al.; Notice of Application

October 5, 2000.

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

ACTION: Notice of an application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 (the "Act") for 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 permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies outside the same group of investment companies.

APPLICANTS: PADCO Advisors, Inc., Rydex Series Funds and Rydex Dynamic Funds.

FILING DATES: The application was filed on February 17, 1997, and amended on February 27, 1998, and on October 2, 2000.

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 applicant 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 30, 2000, 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, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants. 6116 Executive Boulevard, Ste. 400, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, and Nadya B. Roytblat, Assistant Director, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Rydex Series Funds and the Rydex Dynamic Funds (together the "Trusts") are open-end management investment companies registered under the Act comprised of separate series, each of which pursues a distinct set of investment objectives and policies. PADCO Advisors, Inc. is a Maryland corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the series of the Trusts (each, a "Rydex Fund").

2. Applicants request relief to permit registered open-end management investment companies that are not part of the same "group of investment companies," as that term is defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts (each, a "Fund of Funds"), to acquire shares of Rydex Funds. Each Fund of Funds will be advised by an investment adviser that is registered under the Advisers Act ("Fund of Funds Adviser"). Applicants request that the relief apply to: (a) Each open-end management investment company that currently or subsequently is part of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act as the Trusts (together with the Rydex Funds, "Underlying Funds"); and (b) each Fund of Funds that enters into a participation agreement ("Participation Agreement") with an Underlying Fund to purchase shares of the Underlying Fund.¹

3. Applicants state that the Rydex Funds will offer Fund of Funds simple and efficient vehicles to achieve their asset allocation or diversification objectives. Applicants also assert that the Rydex Funds provide high quality and low cost professional investment program alternatives to Fund of Funds that do not have sufficient assets to operate a comparable fund.

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

¹ All investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in Underlying Funds and not in any other registered investment company.

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 from selling its shares 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)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any 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 protection of investors. Applicants seek an exemption under section 12(d)(1)(f) to permit a Fund of Funds to acquire shares of the Rydex Funds and to permit the Rydex Funds to sell shares to the Fund of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address 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 affiliates over the Rydex Funds. To limit the control that a Fund of Funds may have over a Rydex Fund, applicants propose a condition prohibiting the Fund of Funds Adviser and certain affiliates (individually or in the aggregate) from controlling a Rydex Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Rydex Funds, applicants propose conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliate entities from taking advantage of a Rydex Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that a Fund of Funds understands the implications of an investment by a Fund

of Funds under the requested order, each Fund of Funds and the appropriate Trust will execute a Participation Agreement stating that the board of directors of the Fund of Funds and the Fund of Funds Adviser understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that a Rydex Fund may choose to reject an investment from a Fund of Funds.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors of each Fund of Funds, including a majority of the disinterested directors, will be required to determine that the advisory fees charged to the Fund of Funds are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Rydex Fund in which the Fund of Funds may invest. In addition, a Fund of Funds Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation received by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser from the Rydex Funds in connection with the investment by the Fund of Funds in the Rydex Funds. Applicants also state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the applicable limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

7. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Rydex Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by section 12(d)(1)(E) of the Act² or an exemptive order allowing a Rydex Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require that a Fund of Funds' prospectus and sales literature disclose, in "plain English," the unique characteristics of a Fund of Funds investing in the Rydex Funds, including, but not limited to, the expense structure and any additional

expenses of investing in the Rydex Funds.

B. Section 17(a)

1. 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 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.

2. Applicants state that a Rydex Fund could become an affiliated person of a Fund of Funds if the Fund of Funds acquires more than 5% of a Rydex Fund's outstanding voting securities. In light of this possible affiliation, section 17(a) could prevent a Rydex Fund from selling shares to and redeeming shares from the Fund of Funds.

3. 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.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Rydex Funds will be based on the net asset values of the Rydex Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Rydex 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. (a) A Fund of Funds Adviser, (b) any person controlling, controlled by, or under common control with a Fund of

Funds Adviser, and (c) any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act who is advised by a Fund of Funds Adviser or any person controlling, controlled by, or under common control with a Fund of Funds Adviser (collectively, the "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 Group, in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Rydex Fund, the Group 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.

2. A Fund of Funds and its investment adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Fund of Funds Affiliate") will not 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, promoter, principal underwriter, and 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 is 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. The board of trustees of each Trust ("Board of Trustees"), including a majority of the disinterested trustees, will determine that any consideration paid by a Rydex Fund to a 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.

² A Rydex Fund may operate as a "feeder fund" that invests all of its assets in another investment company (the "master fund") in reliance on section 12(d)(1)(E) of the Act. Applicants state that in such situations, the master fund would be in the same group of investment companies as the Rydex Fund and no other feeder funds would invest in the master fund.

5. No Fund of Funds or Fund of Funds Affiliate will cause a Rydex Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, employee is an affiliated person (each an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which principal underwriter is an Underwriting Affiliate is considered 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, 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 shares of the Rydex Fund.

The Board of Trustees should consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Rydex Fund; (b) 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 (c) whether the amount of securities purchased by the Rydex Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have significantly from prior years. The Board of Trustees will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

7. The Trusts 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 will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of

each purchase, 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's determinations were made.

8. Prior to an investment in shares of a Rydex Fund in excess of the limit in section 12(d)(1)(A)(i), each Fund of Funds and the appropriate Trust will execute an agreement stating, without limitation, that the board of directors of the Fund of Funds and the Fund of Funds Adviser have read the notice of the application requesting the order, 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 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 also will 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 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 a period of not less than six years from the end of the fiscal year in which any investment occurred, 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 the contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract 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 a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by a Rydex Fund under rule 12b-1 under the Act) received by the Fund of Funds Adviser or an affiliated person of the Funds of Funds Adviser from the Rydex Funds in connection with the investment by the Funds of Funds in the Rydex Funds.

11. Any sales charges and/or service fees with respect to shares of the Fund

of Funds will not exceed the applicable limits set forth in rule 2830 of the NASD Conduct Rules.

12. No Rydex Fund 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 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.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24677; File No. 812-12030]

First Allmerica Financial Life Insurance Company, et al.

October 5, 2000.

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

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the deduction of a monthly charge upon termination of an Optional Insurance Rider.

APPLICANTS: First Allmerica Financial Life Insurance Company ("First Allmerica") and Allmerica Financial Life Insurance and Annuity Company ("Allmerica Financial") (hereinafter referred to as the "Companies") together with Separate Account VA-K of First Allmerica, Allmerica Select Separate Account of First Allmerica, Separate Account VA-P of First Allmerica, Separate Account KG of First Allmerica, Separate Account KGC of First Allmerica, Separate Account VA-K of Allmerica Financial, Allmerica Select Separate Account of Allmerica Financial, Separate Account VA-P of Allmerica Financial, Separate Account KG of Allmerica Financial, Separate Account KGC of Allmerica Financial (together, the "Separate Accounts"), and Allmerica Investments, Inc. (collectively "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act, to the extent necessary to