

the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 8th day of December, 2005.

For the Nuclear Regulatory Commission.

**T. Robert Tjader, Sr.,**

*Acting Branch Chief, Technical Specifications Branch, Division of Inspection & Regional Support, Associate Director for Operating Reactor Oversight & Licensing, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27184; 812-13176]

### The Integrity Funds, 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)(f) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(F)(ii) of the Act.

*Summary of Application:* Applicants request an order to permit certain registered open-end management investment companies relying on section 12(d)(1)(F) of the Act to charge a sales load in excess of 1½ percent.

*Applicants:* Integrity Money Management, Inc. (the "Adviser"), Integrity Funds Distributor, Inc. (the "Distributor"), and The Integrity Funds on behalf of itself and certain series thereof, and future registered open-end management investment companies and series thereof advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser or for which the Distributor or any entity controlling, controlled by, or under common control with the Distributor serves as principal underwriter (the "Funds").

*Filing Dates:* The application was filed on March 17, 2005 and amended on December 2, 2005.

*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 the 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: Brenda Sem, c/o Integrity Mutual Funds, Inc., 1 Main Street North, Minot, North Dakota 58703.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, at (202) 551-6815 or Mary Kay Frech, Branch Chief, 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 Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (tel. (202) 551-8090).

#### Applicants' Representations

1. The Integrity Funds is a Delaware statutory trust registered with the Commission under the Act as an open-end management investment company. The Integrity Funds currently consists of ten Funds.<sup>1</sup> The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Distributor is the principal underwriter to the Funds and is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Certain Funds, including the All Season Fund, intend to invest all or a portion of their assets in the shares of various other registered 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 Funds ("Underlying Funds") in reliance on section 12(d)(1)(F) of the Act. Each of the Underlying Funds will be registered as a closed-end investment company, an open-end investment

company or unit investment trust. The Underlying Funds may also be registered as open-end investment companies or unit investment trusts that have received exemptive relief to, among other things, issue shares of limited redeemability that can be traded on an exchange at negotiated prices ("Exchange-Traded Funds"). The Funds also may invest a portion of their assets directly in equity or fixed income securities, and other investments. Applicants request relief to permit the Funds to charge a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act.

#### Applicants' Legal Analysis

##### A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the 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) of the Act provides that no registered open-end investment company, its principal underwriter and any broker or dealer may sell securities of the 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.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to the acquisition by a registered investment company of the securities of an investment company if, among other things, the acquiring company and its affiliates immediately after the purchase own no more than 3% of an acquired company's total outstanding stock and the acquiring company does not charge a sales load in excess of 1½%. Applicants state that the Funds will comply with section 12(d)(1)(F) in all respects except for the sales load limit of 1½%.

3. Section 12(d)(1)(f) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

4. Applicants request an order under section 12(d)(1)(f) exempting them from the sales load limitation in section

<sup>1</sup> The Integrity All Season Fund (the "All Season Fund") is the only existing Fund that currently intends to rely on the requested relief. Any existing or future registered open-end management investment company or series thereof that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

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.<sup>1</sup> The order would also amend a condition in another prior order.<sup>2</sup>

**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")

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

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