

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ESBWR Subcommittee; Notice of Meeting

The ACRS ESBWR Subcommittee will hold a meeting on October 25, 2007, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss unclassified safeguards and proprietary information pursuant to 5 U.S.C. 552b(c)(3) and (4).

The agenda for the subject meeting shall be as follows:

*Thursday, October 25, 2007—8:30 a.m. Until 5 p.m.*

The Subcommittee will review and discuss several chapters of the Draft Safety Evaluation Report with Open Items associated with the ESBWR Design Certification. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GE-Hitachi Nuclear Energy Americas LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Charles G. Hammer (telephone 301/415-7363) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 27, 2007.

**Cayetano Santos,**

*Chief, Reactor Safety Branch.*

[FR Doc. E7-19503 Filed 10-2-07; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28001; 812-13398]

### American Capital Strategies, Ltd.; Notice of Application

September 27, 2007.

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

**ACTION:** Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicant, American Capital Strategies, Ltd., requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the applicant (the "Non-employee Directors") under its 2007 Stock Option Plan (the "Plan").

**FILING DATES:** The application was filed on June 15, 2007 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 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 22, 2007, and should be accompanied by proof of service on applicant, 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 Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicant, 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Nadya B. Roytblat, 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 is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0102 (telephone 202-551-5850).

### Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.<sup>1</sup> Applicant's primary business objectives are to increase its net operating income and net asset value by investing its assets in senior debt, subordinated debt, with and without detachable warrants, and equity of small to medium sized businesses with attractive current yields and potential for equity appreciation. Applicant's investment decisions are made either by its board of directors (the "Board"), based on recommendations of the executive officers of applicant, or, for investments that meet certain objective criteria established by the Board, by the executive officers of applicant, under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the Plan to its Non-employee Directors.<sup>2</sup> Applicant has a nine member Board. Seven of the eight current members of the Board are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant ("Disinterested Directors").<sup>3</sup> The Board approved the Plan at a meeting held on March 8, 2007. Applicant's stockholders approved the Plan at the annual meeting of stockholders held on May 4, 2007.

3. Applicant's officers and employees, and Non-employee Directors are eligible to receive options under the Plan. Under the Plan, a maximum of 400,000 shares of applicant's common stock, in the aggregate, may be issued to Non-employee Directors and 50,000 shares of

<sup>1</sup> Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> The Non-employee Directors receive a \$75,000 per year retainer payment and \$2,500 for each Board or committee meeting or other designated Board-related meeting attended, and reimbursement for related expenses. Non-employee Directors who chair a committee of the Board receive an additional \$10,000 retainer per year. Non-employee Directors who serve as directors on the boards of portfolio companies also receive an annual retainer from applicant set at \$30,000 per board, in lieu of any payment from the portfolio company. Further, under the terms of a disinterested director retention plan that applicant established in 2006, Non-employee Directors are generally entitled to receive a payment upon termination of service as a director equal to a multiple of the number of years of service as a Non-employee Director.

<sup>3</sup> The Board presently has one vacancy. All of the Non-employee Directors are Disinterested Directors.

applicant's common stock may be issued to any one Non-employee Director. Each of the seven Non-employee Directors serving on the Board as of May 4, 2007 will be granted options to purchase 50,000 shares of applicant's common stock (the "Initial Grants") on the date that the Commission issues an order on the application ("Order Date"). The options issued under the Initial Grants will vest in three equal parts on each of the first three anniversaries of May 4, 2007. Any person who becomes a Non-employee Director after May 4, 2007 will be entitled to receive options to purchase 50,000 shares of applicant's common stock (the "Other Grants") on the later of the date such person becomes a Non-employee Director and the Order Date. The options issued under the Other Grants will vest in three equal parts on each of the first three anniversaries of the date such person becomes a Non-employee Director.

4. Under the terms of the Plan, the exercise price of an option will not be less than 100% of the current market value of, or if no such market value exists, the current net asset value per share of, applicant's common stock on the date of the issuance of the option.<sup>4</sup> Options granted under the Plan will expire within ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution. In the event of the death or disability of a Non-employee Director during such director's service, all such director's unexercised options will immediately become exercisable and may be exercised for a period of three years following the date of death (by such director's personal representative) or one year following the date of disability, but in no event after the respective expiration dates of such options. In the event of the termination of a Non-employee Director for cause, any unexercised options will terminate immediately. If a Non-employee Director's service is terminated for any reason other than by death, disability, or for cause, the options may be exercised within one year immediately following the date of termination, but in no event later than the expiration date of such options.

5. Applicant's officers and employees are eligible or have been eligible to receive options under applicant's six stock option plans under which Non-

employee Directors are not entitled to participate (the "Employee Plans"), applicant's 2006 stock option plan (the "2006 Option Plan") and the Plan. Non-employee Directors are eligible or have been eligible to receive options under applicant's two Disinterested Director stock option plans (the "Disinterested Director Plans") and the 2006 Option Plan (collectively, the 2006 Option Plan, the Disinterested Director Plans and the Employee Plans are the "Other Plans"). As of August 31, 2007, applicant had 186,436,201 shares of common stock outstanding.<sup>5</sup> The 400,000 shares of applicant's common stock that may be issued to Non-employee Directors under the Plan represent 0.2% of applicant's outstanding voting securities as of August 31, 2007. As of the same date, applicant had no outstanding warrants or rights to purchase its voting securities and had no outstanding options to purchase its voting securities other than the outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan. As of August 31, 2007, the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 19,173,168 shares of applicant's common stock, or approximately 10.3% of applicant's outstanding voting securities. As of the same date, the maximum number of voting securities that would result from the exercise of all outstanding options issued and all options issuable to applicant's directors, officers, and employees under the Other Plans and the Plan would be 25,225,611 shares of applicant's common stock, or approximately 13.5% of applicant's outstanding voting securities.

#### **Applicant's Legal Analysis**

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the

voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Non-employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the Plan will provide significant at-risk incentives to Non-employee Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly

<sup>4</sup> Under the Plan, "current market value" (defined as "fair market value") is generally the closing sales price of applicant's shares as quoted on the Nasdaq Global Select Market, or alternatively, on the exchange where applicant's shares are traded, on the date the option is granted.

<sup>5</sup> Applicant's common stock constitutes the only voting security of applicant currently outstanding.

experienced, successful and dedicated business and professional people who are critical to applicant's success as a BDC.

4. Applicant states that the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 19,173,168 shares of applicant's common stock, or approximately 10.3% of applicant's outstanding voting securities as of August 31, 2007, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of common stock issuable to Non-employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-19539 Filed 10-2-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28000; 812-13390]

### Rydex ETF Trust, et al.; Notice of Application

September 27, 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) 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.

**APPLICANTS:** Rydex ETF Trust ("Trust"), PADCO Advisors II, Inc. ("Adviser"), and Rydex Distributors, Inc. ("Distributor").

**SUMMARY OF APPLICATION:** Applicants request an order to amend a prior order that permits: (a) Certain open-end management investment companies ("Initial Funds") to issue shares redeemable in large aggregations only ("Shares"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) dealers to sell Shares to secondary market

purchasers unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; and (d) certain affiliated persons of the Initial Funds to deposit securities into, and receive securities from, the Initial Funds in connection with the purchase and redemption of aggregations of Shares ("Prior Order").<sup>1</sup> Applicants seek an amended order to permit the Trust to offer series ("New Inverse Funds") that seek to achieve the inverse performance of certain international equity and fixed income securities indices (collectively, "New Underlying Indices"). The amended order also would permit the Trust to offer future series ("Future Funds") that seek to achieve a multiple or the inverse of the performance of additional equity and fixed income securities indices (the New Inverse Funds and Future Funds are "New Funds," and the New Funds and Initial Funds are "Funds").

**FILING DATES:** The application was filed on May 23, 2007, and amended on September 21, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief 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 22, 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: Rydex ETF Trust; Rydex Distributors, Inc.; and PADCO Advisors II, Inc., 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

<sup>1</sup> Rydex ETF Trust, et al., Investment Company Act Release Nos. 27703 (Feb. 20, 2007) (notice) and 27754 (Mar. 20, 2007) (order).

**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. 202-551-5850).

### Applicants' Representations

1. The Trust, a Delaware statutory trust, is an open-end management investment company registered under the Act and is organized as a series fund with multiple separate 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 to a Fund will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, serves as the principal underwriter and distributor for the Funds.

2. The Prior Order permits the Initial Funds to seek daily investment results, before fees and expenses, that (a) Correspond to 125%, 150% or 200% of the return of certain equity securities indices, or (b) move in the opposite direction of the performance of certain equity securities indices in multiples of 100%, 125%, 150% or 200%. Applicants seek to amend the Prior Order to permit the Trust to issue shares of New Inverse Funds using the New Underlying Indices,<sup>2</sup> and Future Funds using additional securities indices (such additional indices, together with the New Underlying Indices and the underlying indices for the Initial Funds, the "Underlying Indices").

3. A New Fund using a fixed income index as its Underlying Index will not: (a) Hold restricted securities eligible for resale pursuant to Rule 144A under the Securities Act of 1933, or (b) engage in "to-be-announced" transactions when trading mortgage-backed securities. Additionally, such New Funds will use the same portfolio investment methodology currently used by the Trust except that, where relevant, such Funds may also invest in the fixed income equivalents of the portfolio investments described in the application for the Prior Order. A New Fund that uses an international index as its Underlying Index will not hold depositary receipts.

<sup>2</sup> The New Underlying Indices, which are described in the application, include 41 international equity indices and 18 fixed income indices.