

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27749; 812-13295]

The RBB Fund, Inc. and Abundance Technologies, Inc.; Notice of Application

March 8, 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 Application: The order would permit certain series of a registered open-end management investment company to acquire shares of registered open-end management investment companies and unit investment trusts (“UITs”) that are outside the same group of investment companies.

Applicants: The RBB Fund, Inc. (the “Company”) and Abundance Technologies, Inc. (the “Adviser”).

Filing Dates: The application was filed on May 23, 2006 and amended on March 6, 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 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. April 2, 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, The RBB Fund, Inc., 400 Bellevue Parkway, Wilmington, DE 19809 and Abundance Technologies, Inc., 3700 Park 42 Drive, Suite 105A, Cincinnati, OH 42141.

For Further Information, Contact: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Janet M. Grossnickle, 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 Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations:

1. The Company is a Maryland corporation and an open-end management investment company registered under the Act that is comprised of eighteen separate series advised by various investment advisers, including the Adviser. The Company intends to establish three new series: Free Market U.S. Equity Fund, Free Market International Equity Fund and Free Market Fixed-Income Fund, each of which will be advised by the Adviser (each such series, a "Fund of Funds").¹

2. Applicants request relief to permit a Fund of Funds to acquire shares of registered open-end management investment companies or UITs 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 ("Underlying Funds")² and the Underlying Funds to sell such shares to the Fund of Funds.

¹ Applicants also request relief with respect to any future series of the Company for which the Adviser serves as investment adviser (included in the term "Fund of Funds.")

² The Underlying Funds may include UITs ("Underlying Trusts") and open-end management investment companies ("Underlying Management Companies") that have received exemptive relief to sell their shares on a national securities exchange at negotiated prices ("ETFs"). Shares of an ETF also may be purchased from the ETF in large aggregations

Applicants also apply for an order pursuant to section 6(c) and section 17(b) of the Act exempting Applicants from section 17(a) of the Act to the extent necessary to permit purchases and redemptions by a Fund of Funds of shares of the Underlying Funds and to permit the Underlying Funds to sell or redeem their shares in transactions with the Funds of Funds.³ Applicants state that each Fund of Funds will provide an efficient and simple method of allowing investors, with minimal investments, to create a comprehensive asset allocation program.

3. The Adviser, a privately-held Ohio corporation, is registered under the Investment Advisers Act of 1940. The Adviser serves, and will serve, as investment adviser to the Funds of Funds.

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.

by delivering a basket of specified securities to the ETF, and large aggregations of shares may be redeemed from an ETF in exchange for a basket of specified securities ("In-kind ETF Purchases and Redemptions").

³ All Funds of Funds 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 order.

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 protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell shares of the Underlying Funds 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 an Underlying Fund. To limit the control that a Fund of Funds may have over an Underlying Fund, applicants propose a condition prohibiting: (a) the Adviser and any person controlling, controlled by or under common control with the Adviser, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act that is advised 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 that meets the definition of section 2(a)(20)(B) of the Act (“Sub-Adviser”), any person controlling, controlled by or under common control with the Sub-Adviser, 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 by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-

Adviser (collectively, the “Sub-Adviser Group”) from controlling an Underlying Fund within the meaning of section 2(a)(9) of the Act.

6. Applicants also propose conditions to preclude a Fund of Funds and its affiliated entities from taking advantage of an Underlying Fund. Under condition 2 no Fund of Funds or its Adviser, Sub-Adviser, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, a “Fund of Funds Affiliate”) will cause any existing or potential investment by the Fund of Funds in shares of an Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the 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, an “Underlying Fund Affiliate”). Condition 5 precludes a Fund of Funds and any Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Management Company or sponsor to an Underlying Trust) from causing an Underlying Fund to purchase 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, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Adviser, Sub-Adviser, or employee is an affiliated person (each, an “Underwriting Affiliate,” except any person whose relationship to the Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an “Affiliated Underwriting.”

7. As an additional assurance that an Underlying Management Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds’ investment in an Underlying Management Company in excess of the limit in section

12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and the Underlying Management Company 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 an 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 by a Fund of Funds.⁴

8. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, before approving any investment advisory contract under section 15 of the Act, the board of directors or trustees (“Board”) of the Company, including a majority of the directors or trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Disinterested Directors”), will find that the investment advisory fees charged under such contract are based on services provided that are 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.

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 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 one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing or lending transactions. Applicants also represent that a Fund of Funds’ prospectus and

⁴ An Underlying Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

sales literature will contain concise, “plain English” disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds. Each Fund of Funds also will comply with the disclosure requirements adopted in Investment Company Act Release No. 27399 (June 20, 2006).

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 (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.

2. Applicants state that the Funds of Funds and the Underlying Funds 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.⁵

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 reasonable and fair 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

⁵ Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. To the extent a Fund of Funds engages in In-Kind ETF Purchases and Redemptions, Applicants request relief from Section 17(a) for these transactions.

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 transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.⁶ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. 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 the 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) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of the Sub-Adviser Group will not control (individually or in the aggregate) an 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 an Underlying Fund, the Group or the Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Underlying Fund, it will vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares. This condition shall not apply to the Sub-Adviser Group with

⁶ 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 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.

respect to an Underlying Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Underlying Management Company) or as the sponsor (in the case of an Underlying Trust).

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

3. The Board of the Company, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to assure that the Adviser and any Sub-Adviser to the Fund of Funds 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 of Funds Affiliate from an Underlying Fund or an Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Underlying Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Underlying Management Company, including a majority of the Disinterested Directors, will determine that any consideration paid by the Underlying Management Company to the 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 Underlying Management Company; (b) is within the range of consideration that the Underlying Management 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 an

Underlying Management Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Management Company or sponsor to an Underlying Trust) will cause an Underlying Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Underlying Management Company, including a majority of the Disinterested Directors, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Management Company in Affiliated Underwritings, once an investment by a Fund of Funds in the securities of the Underlying Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board 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 Underlying Management Company. The Board will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Underlying Management Company; (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 Underlying Management Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Underlying Management Company shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period of 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 of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of an Underlying Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, 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 determinations of the Board of the Underlying Management Company were made.

8. Prior to an investment in shares of an Underlying Management Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Underlying Management Company will execute a Participation Agreement stating, without limitation, that their Boards 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 an Underlying Management Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Underlying Management Company of the investment. At such time, the Fund of Funds also will transmit to the Underlying Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Underlying Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Underlying Management 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.

9. Prior to approving any investment advisory agreement under section 15 of the Act with respect to a Fund of Funds, the Board of the Company, including a majority of the Disinterested Directors, will find that the advisory fees charged under such agreement are based on services provided that are in addition to, rather than duplicative of, the services provided under the investment advisory agreement(s) of any Underlying Fund in which the Fund of Funds may invest. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Company.

10. The 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 an Underlying Management Company under rule 12b-1 under the Act) received from an 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 an Underlying Management Company, in connection with the investment by the Fund of Funds in the Underlying Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Underlying Fund by the Sub-Adviser, or an affiliated person of the Sub-Adviser, other than any advisory fees paid to the Sub-Adviser or its affiliated person by an Underlying Management Company, in connection with the investment by the Fund of Funds in the Underlying Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

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

12. No Underlying Fund will acquire securities of any other 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 (i) 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 1940 Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one or more affiliated investment companies for short-term cash management purposes, or (b) 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