

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31226; File No. 812-14299]

Advisors Series Trust and Vivaldi Asset Management, LLC; Notice of Application

August 27, 2014

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

Action: Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Advisors Series Trust (the “Trust”) and Vivaldi Asset Management, LLC (the “Advisor”).

Filing Dates: The application was filed on April 10, 2014 and amended on August 8, 2014.

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 September 22, 2014, 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 20549-1090. Applicants: Advisors Series Trust, 615 East Michigan Street, Milwaukee, WI 53202 and Vivaldi Asset Management, LLC, 1622 Willow Road, Suite 101, Northfield, IL 60093.

For Further Information Contact: Deepak T. Pai, Senior Counsel, at (202) 551-6876 or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust offers multiple series (each a "Fund" and together the "Funds"), two of which will be advised by the Advisor, each with its own investment objectives, policies, and restrictions.<sup>1</sup>

2. The Advisor, a limited liability company organized under Delaware law, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

The Advisor will serve as investment adviser to the Funds pursuant to an investment advisory

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<sup>1</sup> Applicants also request relief with respect to any existing or future series of the Trust or any other registered open-end management investment company that: (a) is advised by the Advisor, or by a person controlling, controlled by or under common control with the Advisor or its successor (included in the term "Advisor"); (b) uses the manager of managers structure ("Manager of Managers Structure") described in the application; and (c) complies with the terms and conditions of the application. The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Sub-Advisor (as defined below), the name of the Advisor will precede the name of the Sub-Advisor.

agreement with the Trust (the “Advisory Agreement”)<sup>2</sup>, approved by the board of trustees of the Trust (each a “Board”),<sup>3</sup> including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust, the Funds, or the Advisor (the “Independent Trustees”) and by the shareholders of a Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. Applicants are not seeking any exemptions from the provisions of the Act with respect to any Advisory Agreement.<sup>4</sup>

3. Under the terms of the Advisory Agreement, the Advisor will provide the Funds with overall investment management services and, as it deems appropriate, will continuously review, supervise, and administer each Fund’s investment program, subject to the supervision of, and policies established by, the Board. For the investment management services it will provide to a Fund, the Advisor will receive the fee specified in the Advisory Agreement from that Fund. The Advisory Agreement will permit the Advisor to delegate certain responsibilities to one or more investment subadvisers (each, a “Sub-Advisor”), to manage all or a portion of the assets of each Fund pursuant to an investment subadvisory agreement with a Sub-Advisor (“Sub-Advisory Agreement”). Each Sub-Advisor is, and any future Sub-Advisor will be, an “investment adviser,” as defined in section 2(a)(20) of the Act, and registered as an investment adviser under the Advisers Act, or not subject to such registration. The Advisor evaluates, allocates assets to, and

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<sup>2</sup> “Advisory Agreement” includes advisory agreements with an Advisor for the Funds and any future Funds.

<sup>3</sup> The board of trustees of any future Fund is included in the term “Board”.

<sup>4</sup> Orinda Asset Management, LLC (“Orinda”) is the current investment adviser to the Funds. Pursuant to a prior order, *In the Matter of Advisors Series Trust and Orinda Asset Management, LLC*, Investment Company Act Release Nos. 30043 (April 23, 2012) (notice) and 30065 (May 21, 2012) (order), the Funds currently operate in a Manager of Managers Structure. Orinda has indicated its intention to resign as investment adviser to the Funds. The Board, including a majority of the Independent Trustees, has determined to approve the engagement of the Advisor as investment adviser to the Funds, effective upon the resignation of Orinda. The Advisor has determined not to accept the engagement as investment adviser, and Orinda has agreed not to resign as investment adviser, unless and until (i) shareholder approval to the engagement of the Advisor as investment adviser is obtained, and (ii) the relief requested is granted.

oversees the Sub-Advisors, and make recommendations about their hiring, termination, and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Sub-Advisors out of the advisory fee paid by the Funds to the Advisor under the Advisory Agreement.

4. Applicants request an order to permit the Advisor, subject to Board approval, to engage Sub-Advisors to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Advisor that is an “affiliated person,” as defined in section 2(a)(3) of the Act, of the Trust, a Fund, or the Advisor, other than by reason of serving as Sub-Advisor to one or more of the Funds (“Affiliated Sub-Advisor”).

5. Applicants also request an order exempting each Fund from certain disclosure provisions described below that may require the Funds to disclose fees paid by the Advisor to Sub-Advisors. Applicants seek an order to permit each Fund to disclose (as both a dollar amount and as a percentage of a Fund’s net assets) only: (a) the aggregate fees paid to the Advisor and any Affiliated Sub-Advisor; and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, the “Aggregate Fee Disclosure”). A Fund that employs an Affiliated Sub-Advisor will provide separate disclosure of any fees paid to the Affiliated Sub-Advisor.

6. The Funds will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (“Modified Notice and Access Procedures”): (a) within 90 days after a new Sub-Advisor is hired for a Fund, the Fund will send its shareholders either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement;<sup>5</sup> and (b) the Fund

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<sup>5</sup> A “Multi-Manager Notice” will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Securities Exchange Act of 1934 (“Exchange Act”), and specifically will, among other things: (a)

will make the Multi-Manager Information Statement available on the website identified in the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.

Applicants' Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's

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summarize the relevant information regarding the new Sub-Advisor; (b) inform shareholders that the Multi-Manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Fund. A "Multi-Manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-Manager Information Statements will be filed electronically with the Commission via the EDGAR system.

fees,” a description of the “terms of the contract to be acted upon,” and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S-X sets forth the requirements for financial statements required to be included as part of a registered investment company’s registration statement and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b) and (c) of Regulation S-X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) 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 the Act, or from any rule thereunder, 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. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect each Fund’s Advisor, subject to the review and approval of the Board, to select Sub-Advisors who are best suited to achieve the Fund’s investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisor is substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose unnecessary delays and expenses on the Funds, and may preclude a Fund from acting promptly when the applicable Board and Advisor believe that a change would benefit the Fund and its shareholders. Applicants note that the Advisory Agreements and any sub-advisory agreement with an

Affiliated Sub-Advisor will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's "posted" amounts, if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisors to negotiate lower sub-advisory fees with the Advisor if the lower fees are not required to be made public.

Applicants' Conditions:

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

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the Manager of Managers Structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisors and recommend their hiring, termination and replacement.

3. The Funds will inform shareholders of the hiring of a new Sub-Advisor within 90 days after the hiring of that new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Advisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Sub-Advisor change is proposed for a Fund with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

9. Whenever a Sub-Advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to a Fund, including overall supervisory responsibility for the general management and investment of a Fund's assets and, subject to review and approval of the Board, will (i) set a Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisors to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-Advisors; (iv) monitor and evaluate the performance of Sub-Advisors; and (v) implement procedures reasonably designed to ensure that the Sub-Advisors comply with a Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust or of a Fund, or director, manager or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor, except for (i) ownership of interests in the Advisor or any entity that controls, is controlled by or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by or is under common control with a Sub-Advisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. Any new Sub-Advisory Agreement or any amendment to an existing Advisory Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by a Fund will be submitted to the Fund's shareholders for approval.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

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

Kevin M. O'Neill  
Deputy Secretary