

FIDUCIARY/CLAYMORE MLP OPPORTUNITY FUND

Form POS EX

November 06, 2009

As filed with the Securities and Exchange Commission on November 6, 2009

Securities Act File No. 333-148949

Investment Company Act File No. 811-21652

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM N-2

Registration Statement under the Securities Act of 1933

Pre-Effective Amendment No.

Post-Effective Amendment No. 1

and/or

Registration Statement under the Investment Company Act of 1940

Amendment No. 7

FIDUCIARY/CLAYMORE MLP OPPORTUNITY FUND

(Exact Name of Registrant as Specified in Charter)

2455 CORPORATE WEST DRIVE

LISLE, ILLINOIS 60532

(Address of Principal Executive Offices)

Registrant's Telephone Number, Including Area Code: **(630) 505-3700**

KEVIN M. ROBINSON

CLAYMORE ADVISORS, LLC

2455 CORPORATE WEST DRIVE

LISLE, ILLINOIS 60532

(Name and Address of Agent for Service)

COPIES TO:

THOMAS A. HALE

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

155 NORTH WACKER DRIVE

CHICAGO, ILLINOIS 60606

Approximate date of proposed public offering: from time to time after the effective date of this Registration Statement.

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If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, as amended, other than securities offered in connection with a dividend reinvestment plan, check the following box. X

EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File Nos. 333-148949 and 811-21652) of Fiduciary/Claymore MLP Opportunity Fund (the Registration Statement) is being filed pursuant to Rule 462(d) under the Securities Act of 1933, as amended (the Securities Act), solely for the purpose of filing exhibits to the Registration Statement. Accordingly, this Post-Effective Amendment No. 1 consists only of a facing page, this explanatory note and Part C of the Registration Statement on Form N-2 setting forth the exhibits to the Registration Statement. This Post-Effective Amendment No. 1 does not modify any other part of the Registration Statement. Pursuant to Rule 462(d) under the Securities Act, this Post-Effective Amendment No. 1 shall become effective immediately upon filing with the Securities and Exchange Commission. The contents of the Registration Statement are hereby incorporated by reference.

PART C

OTHER INFORMATION

Item 25. Financial Statements And Exhibits

- (1) Financial Statements

Incorporated by reference into Part B of the Registration Statement, as described in the Statement of Additional Information, are the Registrant's:

(i) audited financial statements, notes to such financial statements and the report of independent registered public accounting firm thereon, by reference to the Registrant's Annual Report for the period ended November 30, 2008, as contained in the Registrant's Form N-CSR filed with the Securities and Exchange Commission (the Commission) on February 6, 2009;

(ii) unaudited financial statements and notes to such financial statements, by reference to the Registrant's Semi-Annual Report for the period ended May 31, 2009, as contained in the Registrant's Form N-CSRS filed with the Commission on August 5, 2009.

(2) Exhibits

- (a) Agreement and Declaration of Trust of Registrant(2)
- (b) Amended and Restated By-Laws of Registrant(4)
- (c) Not applicable
- (d) Form of Specimen Share Certificate(2)
- (e) Dividend Reinvestment Plan of Registrant(2)
- (f) Not applicable
- (g) (i) Form of Advisory Agreement between Registrant and Claymore Advisors, LLC (the Adviser)(2)
- (ii) Form of Sub-Advisory Agreement among Registrant, Claymore Advisors, LLC and Fiduciary Asset Management, LLC (the Sub-Adviser)(2)
- (h) (i) Form of Sales Agreement(4)
- (ii) Form of Sales Agreement between Registrant and Cantor Fitzgerald & Co. (*)
- (i) Not applicable
- (j) Form of Custody Agreement(2)
- (k) (i) Form of Stock Transfer Agency Agreement(2)
- (ii) Form of Fund Accounting Agreement(2)

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- (iii) Administration Agreement (4)

- (iv) Committed Facility Agreement between Registrant and BNP Prime Brokerage, Inc. (formerly, Bank of America, N.A. London Branch/Banc of America Finance Services Inc.) (BNP Prime Brokerage) (4)

- (v) Amendment No. 1 to Committed Facility Agreement between Registrant and BNP Prime Brokerage (4)

- (vi) Account Agreement between Registrant and BNP Prime Brokerage (4)

- (vii) Special Custody and Pledge Agreement among Registrant, BNP Prime Brokerage and The Bank of New York (4)
- (viii) Letter pursuant to Committed Facility Agreement between Registrant and BNP Prime Brokerage (5)

- (l) (i) Opinion and Consent of Skadden, Arps, Slate, Meagher & Flom LLP(4)
(ii) Opinion and Consent of Skadden, Arps, Slate, Meagher & Flom LLP (*)

- (m) Not applicable

- (n) Consent of Independent Registered Public Accounting Firm(*)

- (o) Not applicable

- (p) Form of Initial Subscription Agreement(2)

- (q) Not applicable

- (r) (i) Code of Ethics of the Registrant and the Adviser(4)
(ii) Code of Ethics of the Sub-Adviser(4)

- (s) Power of Attorney (3)

(*) Filed herewith.

- (1) Incorporated by reference to Pre-Effective Amendment No. 1 to the Registrant's Registration Statement on Form N-2, filed November 22, 2004 (File No. 333-119674).
- (2) Incorporated by reference to Pre-Effective Amendment No. 2 to the Registrant's Registration Statement on Form N-2, filed December 8, 2004 (File No. 333-119674).

- (3) Incorporated by reference to the Registrant's Registration Statement on Form N-2, filed January 30, 2008 (File No. 333-148949).

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- (4) Incorporated by reference to Pre-Effective Amendment No. 1 to the Registrant's Registration Statement on Form N-2, filed March 24, 2009 (File No. 333-148949).
 - (5) Incorporated by reference to Pre-Effective Amendment No. 2 to the Registrant's Registration Statement on Form N-2, filed September 1, 2009 (File No. 333-148949).
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Item 26. Marketing Arrangements

Reference is made to Exhibit 2(h) to this Registration Statement.

Item 27. Other Expenses of Issuance and Distribution

The following table sets forth the estimated expenses to be incurred in connection with all offering, under this Registration Statement:

| | |
|-----------------------------|-----------|
| NYSE listing fees | \$ 10,000 |
| SEC Registration fees | 6,975 |
| Printing/engraving expenses | 45,000 |
| Accounting fees | 30,000 |
| Legal fees | 280,000 |
| NASD fees | 13,000 |
| Miscellaneous | 15,025 |
| Total | 400,000 |

The following table sets forth the estimated expenses to be incurred in connection with the offering described in the prospectus supplement dated November 6, 2009:

| | |
|-----------------------------|-----------|
| NYSE listing fees | \$ 10,000 |
| SEC Registration fees | 6,975 |
| Printing/engraving expenses | 45,000 |
| Accounting fees | 30,000 |
| Legal fees | 280,000 |
| NASD fees | 13,000 |
| Miscellaneous | 15,025 |
| Total | 400,000 |

Item 28. Persons Controlled by or Under Common Control with Registrant

None

Item 29.

| TITLE OF CLASS | NUMBER OF RECORD SHAREHOLDERS AS OF AUGUST 31, 2009 |
|---|---|
| Common shares of beneficial interest, par value \$0.01 per share | 36 |

Item 30. Indemnification

Article V of the Registrant's Agreement and Declaration of Trust provides as follows:

5.1 NO PERSONAL LIABILITY OF SHAREHOLDERS, TRUSTEES, ETC. No Shareholder of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust. Shareholders

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shall have the same limitation of personal liability as is extended to stockholders of a private corporation for profit incorporated under the Delaware General Corporation Law. No Trustee or officer of the Trust shall be subject in such capacity to any personal liability whatsoever to any Person, save only liability to the Trust or its Shareholders arising from bad faith, willful misfeasance, gross negligence or reckless disregard for his duty to such Person; and, subject to the foregoing exception, all such Persons shall look solely to the Trust Property for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Shareholder, Trustee or officer, as such, of the Trust, is made a party to any suit or proceeding to enforce any such liability, subject to the foregoing exception, he shall not, on account thereof, be held to any personal liability. Any repeal or modification of this Section 5.1 shall not adversely affect any right or protection of a Trustee or officer of the Trust existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

5.2 MANDATORY INDEMNIFICATION. (a) The Trust hereby agrees to indemnify each person who at any time serves as a Trustee or officer of the Trust (each such person being an indemnitee) against any liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and reasonable counsel fees reasonably incurred by such indemnitee in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before any court or administrative or investigative body in which he may be or may have been involved as a party or otherwise or with which he may be or may have been threatened, while acting in any capacity set forth in this Article V by reason of his having acted in any such capacity, except with respect to any matter as to which he shall not have acted in good faith in the reasonable belief that his action was in the best interest of the Trust or, in the case of any criminal proceeding, as to which he shall have had reasonable cause to believe that the conduct was unlawful, provided, however, that no indemnitee shall be indemnified hereunder against any liability to any person or any expense of such indemnitee arising by reason of (i) willful misfeasance, (ii) bad faith, (iii) gross negligence, or (iv) reckless disregard of the duties involved in the conduct of his position (the conduct referred to in such clauses (i) through (iv) being sometimes referred to herein as disabling conduct). Notwithstanding the foregoing, with respect to any action, suit or other proceeding voluntarily prosecuted by any indemnitee as plaintiff, indemnification shall be mandatory only if the prosecution of such action, suit or other proceeding by such indemnitee (1) was authorized by a majority of the Trustees or (2) was instituted by the indemnitee to enforce his or her rights to indemnification hereunder in a case in which the indemnitee is found to be entitled to such indemnification. The rights to indemnification set forth in this Declaration shall continue as to a person who has ceased to be a Trustee or officer of the Trust and shall inure to the benefit of his or her heirs, executors and personal and legal representatives. No amendment or restatement of this Declaration or repeal of any of its provisions shall limit or eliminate any of the benefits provided to any person who at any time is or was a Trustee or officer of the Trust or otherwise entitled to indemnification hereunder in respect of any act or omission that occurred prior to such amendment, restatement or repeal. (b) Notwithstanding the foregoing, no indemnification shall be made hereunder unless there has been a determination (i) by a final decision on the merits by a court or other body of competent jurisdiction before whom the issue of entitlement to indemnification hereunder was brought that such indemnitee is entitled to indemnification hereunder or, (ii) in the absence of such a decision, by (1) a majority vote of a quorum of those Trustees who are neither interested persons of the Trust (as defined in Section 2(a)(19) of the 1940 Act) nor parties to the proceeding (Disinterested Non-Party Trustees), that the indemnitee is entitled to indemnification hereunder, or (2) if such quorum is not obtainable or even if obtainable, if such majority so directs, independent legal counsel in a written opinion concludes that the indemnitee should be entitled to indemnification hereunder. All determinations to make advance payments in connection with the expense of defending any proceeding shall be authorized and made in accordance with the immediately succeeding paragraph (c) below. (c) The Trust shall make advance payments in connection with the expenses of defending any action with respect to which indemnification might be sought hereunder if the Trust receives a written affirmation by the indemnitee of the indemnitee s good faith belief that the standards of conduct necessary for indemnification have been met and a written undertaking to reimburse the Trust unless it is subsequently determined that the indemnitee is entitled to such indemnification and if a majority of the Trustees determine that the applicable standards of conduct necessary for indemnification appear to have been met. In addition, at least one of the following conditions must be met: (i) the indemnitee shall provide adequate security for his undertaking, (ii) the Trust shall be insured against losses arising by reason of any lawful advances, or (iii) a majority of a quorum of the Disinterested Non-Party Trustees, or if a majority vote of such quorum so direct, independent legal counsel in a written opinion, shall conclude, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is substantial reason to believe

that the indemnitee ultimately will be found entitled to indemnification. (d) The rights accruing to any indemnitee under these provisions shall not exclude any other right which any person may have or hereafter acquire under this Declaration, the By-Laws of the Trust, any statute, agreement, vote of stockholders or Trustees who are disinterested persons (as defined in Section 2(a)(19) of the 1940 Act) or any other right to which he or she may be lawfully entitled. (e) Subject to any limitations provided by the 1940 Act and this Declaration, the Trust shall have the power and authority to indemnify and provide for the advance payment of expenses to employees, agents and other Persons providing services to the Trust or serving in any capacity at the request of the Trust to the full extent corporations organized under the Delaware General Corporation Law may indemnify or provide for the advance payment of expenses for such Persons, provided that such indemnification has been approved by a majority of the Trustees.

5.3 NO BOND REQUIRED OF TRUSTEES. No Trustee shall, as such, be obligated to give any bond or other security for the performance of any of his duties hereunder.

5.4 NO DUTY OF INVESTIGATION; NOTICE IN FUND INSTRUMENTS, ETC. No purchaser, lender, transfer agent or other person dealing with the Trustees or with any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by said officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of the Trustees or of said officer, employee or agent. Every obligation, contract, undertaking, instrument, certificate, Share, other security of the Trust, and every other act or thing whatsoever executed in connection with the Trust shall be conclusively taken to have been executed or done by the executors thereof only in their capacity as Trustees under this Declaration or in their capacity as officers, employees or agents of the Trust. The Trustees may maintain insurance for the protection of the Trust Property, its Shareholders, Trustees, officers, employees and agents in such amount as the Trustees shall deem adequate to cover possible tort liability, and such other insurance as the Trustees in their sole judgment shall deem advisable or is required by the 1940 Act.

5.5 RELIANCE ON EXPERTS. Each Trustee and officer or employee of the Trust shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Trust, upon an opinion of counsel, or upon reports made to the Trust by any of the Trust's officers or employees or by any advisor, administrator, manager, distributor, selected dealer, accountant, appraiser or other expert or consultant selected with reasonable care by the Trustees, officers or employees of the Trust, regardless of whether such counsel or expert may also be a Trustee.

Item 31. Business and Other Connections of the Adviser and the Sub-Adviser

The Adviser, a limited liability company organized under the laws of Delaware, acts as investment adviser to the Registrant. The Registrant is fulfilling the requirement of this Item 30 to provide a list of the officers and directors of the Adviser, together with information as to any other business, profession, vocation or employment of a substantial nature engaged in by the Adviser or those officers and directors during the past two years, by incorporating by reference the information contained in the Form ADV of the Adviser filed with the commission pursuant to the Investment Advisers Act of 1940 (Commission File No. 801-62515).

The Sub-Adviser, a limited liability company organized under the laws of Missouri, acts as sub-adviser to the Registrant. The Registrant is fulfilling the requirement of this Item 30 to

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provide a list of the officers and directors of the Sub-Adviser, together with information as to any other business, profession, vocation or employment of a substantial nature engaged in by the Sub-Adviser or those officers and directors during the past two years, by incorporating by reference the information contained in the Form ADV of the Sub-Adviser filed with the commission pursuant to the Investment Advisers Act of 1940 (Commission File No. 801-46751).

Item 32. Location of Accounts and Records

The accounts and records of the Registrant are maintained in part at the offices of the Fund, the Adviser and the Administrator at 2455 Corporate West Drive, Lisle, Illinois 60532, in part at the offices of the Sub-Adviser at 8235 Forsyth Blvd., Suite 700, St. Louis, Missouri 63105, in part at the offices of the Custodian, Transfer Agent and Dividend Disbursing Agent at The Bank of New York, 101 Barclay Street, New York, New York 10216.

Item 33. Management Services

Not applicable.

Item 34. Undertakings

1. Registrant undertakes to suspend the offering of Common Shares until the prospectus is amended, if subsequent to the effective date of this registration statement, its net asset value declines more than ten percent from its net asset value, as of the effective date of the registration statement or its net asset value increases to an amount greater than its net proceeds as stated in the prospectus.
2. Not applicable.
3. Not applicable.
4. Registrant undertakes:
 - (a) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (1) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (2) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and
 - (3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
 - (b) that, for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of those securities at that time shall be deemed to be the initial bona fide offering thereof; and
 - (c) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering;
 - (d) that, for the purpose of determining liability under the 1933 Act to any purchaser, if the Registrant is subject to Rule 430C: Each prospectus filed pursuant to Rule 497(b), (c), (d) or (e) under the 1933 Act as part of a registration statement relating to an offering, other than prospectues filed in reliance on Rule 430A under the 1933 Act, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that

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no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supercede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(e) that for the purpose of determining liability of the Registrant under the 1933 Act to any purchaser in the initial distribution of securities: The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser:

- (1) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 497 under the 1933 Act;
 - (2) the portion of any advertisement pursuant to Rule 482 under the 1933 Act relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
 - (3) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.
-

5. Registrant undertakes that:

- (a) for the purpose of determining any liability under the 1933 Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant under Rule 497(h) under the 1933 Act shall be deemed to be part of this registration statement as of the time it was declared effective; and
- (b) for the purpose of determining any liability under the 1933 Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

6. Registrant undertakes to send by first class mail or other means designed to ensure equally prompt delivery, within two business days of receipt of a written or oral request, any Statement of Additional Information.

Attorney-In-Fact
November 6, 2009

Exhibit Index

| EXHIBIT | EXHIBIT NAME |
|----------------|--|
| (h)(ii) | Form of Sales Agreement between Registrant and Cantor Fitzgerald & Co. |
| (l)(ii) | Opinion and Consent of Skadden, Arps, Slate, Meagher & Flom LLP |
| (n) | Consent of Independent Registered Public Accounting Firm |
