transactions in certain low-priced, over-the-counter securities. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rules 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

Rule 15g–6 requires brokers and dealers that sell penny stocks to their customers to provide monthly account statements containing information with regard to the penny stocks held in customer accounts. It is estimated that approximately 270 respondents incur an average burden of 90 hours annually to comply with the rule.

Rule 15g–7(a) would require brokers and dealers that effect transactions in penny stocks and are the only market makers with respect to such securities to disclose this fact in connection with such transactions. It is estimated that approximately 270 respondents would incur an average burden of 50 hours annually to comply with the rule.

Rule 17Ac2–1 and Form TA–1 is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that approximately 359 respondents will incur an average burden of 538.5 hours annually to comply with the rule and form.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: January 14, 1997.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–1561 Filed 1–22–97; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Rel. No. IC–22472; File No. 812–10402]**

## American Odyssey Funds, Inc., et al.

January 15, 1997.

**AGENCY:** The Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of application for an exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

*Applicant:* American Odyssey Funds, Inc. (''AOF''), American Odyssey Funds Management, Inc. (''AOFMI''), and certain life insurance companies and their separate accounts investing now or in the future in AOF.

*Relevant 1940 Act Sections:* Order requested pursuant to Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

*Summary of Application:* Applicants seek exemptive relief to the extent necessary to permit shares of AOF to be sold to and held by separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies'') or qualified pension and retirement plans outside the separate account context (''Plans'').

*Filing Date:* The application was filed on October 16, 1996.

*Hearing and 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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. or February 10, 1997, and must 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 may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Christopher E. Palmer, Esq., Shea & Gardner, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036.

**FOR FURTHER INFORMATION CONTACT:** Michael Koffler, Staff Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

### Applicant's Representations

1. AOF is a Maryland corporation registered pursuant to the 1940 Act as an open-end, management investment company. AOF currently consists of six separate investment portfolios and may in the future issue shares of additional portfolios and/or multiple classes of shares of each portfolios (such existing and future portfolios and/or classes of shares of each, ''Funds'').

2. AOFMI, the investment adviser for AOF, is a corporation organized pursuant to the laws of New Jersey and is registered as an investment adviser pursuant to the Investment Advisers Act of 1940. AOF has entered into agreements with subadviers who handle the day-to-day management of each individual Fund (the ''Subadvisers'').

3. Shares of the Funds are currently sold to separate accounts of The Travelers Insurance Company, which are registered as unit investment trusts pursuant to the 1940 Act in connection with the issuance of variable contracts.

4. AOF may offer shares of its existing and future Funds to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Travelers Group Inc. in order to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (''Contracts'').

5. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements

under the federal securities laws. The role of AOF with respect to the Separate Accounts and the Plans will be limited to that of offering its shares to the Separate Accounts and the Plans and fulfilling the conditions provided in the application.

6. AOF also offers shares to the trustees (or custodians) of Plans. The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws.

7. AOFMI will not act as an investment adviser to any of the Plans which will purchase shares of AOF. It is possible that any one of the Subadvisers may act as an investment adviser to the Plans which may invest in AOF. However, Applicants represent that none of the assets of any Plan advisory account managed by a Subadviser will be invested in AOF. The Subadvisers are not permitted to advise such Plans to invest in AOF.

Applicants' Legal Analysis

1. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and miles thereunder, if and to the extent that an 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 1940 Act.

2. Applicants request that the Commission issue and order pursuant to Section 6(c) of the 1940 Act exemption them from Sections 9(a), 15(a), and 15(b) thereof and Rules 6e–2(b)(15) and 63–3T(b)(15) thereunder to the extent necessary to permit shares of AOF to be offered and sold to, and held by: (1) Both variable annuity separate accounts and variable life insurance separate accounts of the same life insurance company or of affiliated life insurance companies (''mixed funding''); (2) separate accounts of unaffiliated life insurance separate accounts) ''shared funding''); and (3) trustees of Plans

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 63–2(b)(15) under the 1940 Act provides partial exemptions from Section 9(a), 13(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 63–2(b)(15) and available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated or unaffiliated life insurance company. Also, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

4. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies.

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled premium variable life insurance contracts of flexible premium variable life insurance contracts, or both; or which also offer their share to variable annuity separate accounts of the life insurer of of an affiliated life insurance company'' (emphasis added). Thus, Rule 6e–(T)(b)(15) grants an exemption if the underlying management investment company engages in mixed funding, but not if it engages in share funding or sells its shares to Plans.

6. Applicants state that the current tax law permits AOF to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code (''Code'') imposes certain diversification requirements on the underlying assets of the Contracts invested in AOF. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by Treasury regulations. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirements, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Tres. Reg. § 1–817–5(f)(3)9iii).

7. The promulgation of Rules 63–2 and 63–3(T) preceded the issuance of these treasury regulations. Applicants state that, given the ten-current tax law, the sale of shares of the same investment company to both Separate Accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–3(b)(15) and 6e–3(T)(b)(15).

*Disqualification*

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide: (1) That the eligibility restrictions of Section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of the underlying fund; and (2) that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants assert that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9, when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940

Act to apply the provisions of Section 9(a) to many individuals in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies

10. Applicants submit that there is no regulatory purpose in denying the partial exemptions because of mixed and share funding and sales to Plans. Applicants submit that sales to those entities do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have not involvement in the underlying fund.

*Pass-Through Voting*

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that pass-through voting privileges will be provided with respect to all Contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for Contract owners.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and (15(b) of the 1940 Act to the extent that these sections have been deemed by the Commission to require pass-through voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(15)(b)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company, or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance may disregard the voting instructions of contract owners if the contract owners initiate any change is such insurance company's investment objectives, principal underwriter, or investment adviser provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

13. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts, and is subject to extensive state regulation. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment adviser or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemption necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of AOF shares to Plans will not have any impact on the relief requested in this regard. Shares of AOF sold to Plans will be held by the trustee(s) or custodian(s) of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA'') or applicable provisions of the Code. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions state in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, ERISA permits but does not require pass-through voting to the participants in Plans.

Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans because they are not entitled to pass-through voting privileges.

15. Some Plans, however may provide participants with the right to give voting instructions. However, Applicants note that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Therefore, Applicants submit that the purchase of AOF shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

*Conflicts of Interest*

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in different states does not create a significantly different or greater problem.

17. Applicants submit that shared funding by unaffiliated insurers, in this respect, is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for difference in state regulatory requirements. In any event, the conditions proposed below (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulatory decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its separate account's investment in AOF. This requirement will be provided for in agreements that

will be entered into by Participating Insurance Companies with respect to their participation in AOF.

18. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

19. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund and no charge or penalty will be imposed as a result of such withdrawal.

20. Applicants submit that investment by the Plans in any of the Funds similarly will not increase the chance of conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Plan choosing to invest in the Funds. Moreover, Applicants state that even if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

21. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans, long-term investment, coincides with that of the Contracts and should not increase the potential for conflicts. Applicants state that each Fund will be managed to attempt to achieve the investment objective of the Fund, and not to favor or disfavor any particular Participating Insurance Company or type of Contract.

22. Applicants note that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of AOF. In addition, permitting mixed and shared funding also will facilitate the establishment of additional Funds serving diverse goals.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Applicants assert that, therefore, neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder recognize any inherent conflicts of interests if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

24. While there may be differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or the Plan cannot net purchase payments to make the distributions, the Separate Account or the Plan will redeem share of AOF at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

25. Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that The Funds will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the respective Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

26. Applicants submit that the ability of the Funds to sell their respective share directly to Plans does not create a ''senior security,'' as that term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. As noted above, regardless of the rights and benefits of participants under the Plans, or Contract owners under Contracts, the Plans and the Separate Accounts have rights only with respect to their respective share of AOF. They can redeem such shares only at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants assert that there are no conflicts between the Contract owners of the Separate Accounts and the participants under the Plans with respect to the state insurance commissioner's veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their Separate Accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, trustees of Plans can make the decision quickly and implement the redemption of their shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants maintain that even if there should arise issues where the interests of Contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Fund.

28. Applicants submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of AOFMI and the Subadvisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets

available for investment by AOF, thereby promoting economies of scale, by permitting increased safety through greater diversification or by making the addition of new Funds more feasible. Therefore, making AOF available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors (''Board'') of the Funds shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended for: (a) A period of 45 days if the vacancy or vacancies may be filled by the remaining directors on the Board; (b) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all the Separate Accounts investing in the Funds and the Plan participants investing in the Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, AOFMI (or any other investment adviser of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of a Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the relevant Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies investing in the Funds under their agreements governing participation therein, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Plans with participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of the disinterested directors of such Board, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from AOF or any Fund and reinvesting such assets in a different investment medium, which may include another Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, then that Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination that a material irreconcilable conflict exists and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing their participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants. For purposes of this Condition 4, a majority of the disinterested directors of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or AOFMI be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially and

adversely affected by the material irreconcilable conflict. Further, no Plan shall be required by this Condition 4 to establish a new funding medium for such Plan if: (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The determination by any Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from contract owners. Each Participating Insurance Company will also vote shares for which it has not received timely voting instructions from contract owners as well as shares which the Participating Insurance Company itself owns, in the same proportion as those shares for which voting instructions from contract owners are timely-received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Funds. Each Plan will vote as required by applicable law and governing Plan documents.

7. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict of interest, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) AOF is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in AOF and the interests of Plans investing in AOF may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Fund) and, in particular, each Fund will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested by the application summarized in this notice, then the Funds and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent that such rules are applicable.

11. The Participants, at least annually, will submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may fully carry out the obligations imposed upon them by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participants to provide these reports, materials, and data upon the reasonable request of the Boards, shall be a contractual obligation of all Participants under their agreements governing their participation in the Funds.

12. If a Plan should ever become a holder of ten percent or more of the assets of a Fund, such Plan will execute a participation agreement with the applicable Fund. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–1558 Filed 1–22–97; 8:45 am]

BILLING CODE 8010–01–M

## Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 27, 1997.

A closed meeting will be held on Tuesday, January 28, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 28, 1997, at 10:00 a.m., will be:

Injunction of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.