

a benefit. One response is requested of each respondent.

The RRB proposes to revise Form G-45 to add language required by the Paperwork Reduction Act of 1995. Non-burden impacting reformatting and minor editorial changes are also proposed. The RRB estimates that 100 Form G-45's are completed annually. The completion time for Form G-45 is estimated at 10 minutes per response.

**Additional Information or Comments:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received on or before April 7, 1998.

**Chuck Mierzwa,**  
Clearance Officer.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23017; 812-10570]

### American Odyssey Funds, Inc., et al.; Notice of Application

February 2, 1998.

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit them to enter into and materially amend investment subadvisory agreements without shareholder approval.

**Applicants:** American Odyssey Funds, Inc. ("AOF") and American Odyssey Funds Management, Inc. (the "Manager").

**FILING DATE:** The application was filed on March 12, 1997 and amended on October 9, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1998 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, Two Tower Center, East Brunswick, New Jersey 08816.

**FOR FURTHER INFORMATION CONTACT:** John K. Forst, Attorney Advisor, at (202) 942-0569, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (Tel. 202-942-8090).

### Applicants' Representations

1. AOF is a Maryland corporation registered under the Act as an open-end management investment company currently offering six series (the "Funds").<sup>1</sup> Shares of each Fund are sold only to variable contract separate account and qualified retirement plans. A majority of each Fund's shares underlie variable annuity contracts held by contract owners.

2. The Manager, a wholly-owned indirect subsidiary of Travelers Group Inc. and a member of the Copeland Companies (a related group of indirect subsidiaries of Travelers Group Inc.) is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). AOF has entered into an investment management agreement (the "Management Agreement") with the Manager. The Manager has overall supervisory and administrative responsibility for each of the Funds, and selects and supervises one or more subadvisers for each Fund. The Manager is paid a fee by each Fund based on its average daily net assets.

3. Subject to the general supervision of the board of directors of AOF (the "Board"), the Manager (a) Sets each Fund's overall investment strategies; (b) evaluates, selects, and recommends subadvisers to manage all or a part of

each Fund's assets; (c) monitors and evaluates the subadvisers' investment program and results; and, (d) reviews each Fund's compliance with its investment objectives, policies, and restrictions. In addition, the Manager recommends to the Board whether subadvisers' agreements should be renewed, modified, or terminated. The Manager and a consultant retained by the manager to help it evaluate subadvisers, provide information to the Board to aid it in making its determinations. The Board generally reviews comparative information provided by the Manager and the consultant regarding fees charged by other investment advisers for similar services. The Board receives quarterly reports for its regular meeting regarding the performance of each subadviser and the results of the Manager's evaluation and monitoring functions. The reports provide an overall assessment of the investment subadviser and, if appropriate, would include any recommendation for action with respect to the subadvisory agreement.

4. The subadvisers, each of which is an investment adviser registered under the Advisers Act, furnished discretionary investment advisory services in connection with the management of the Funds. A subadviser has some or all of a Fund's assets allocated to it and is responsible for the day-to-day investment management of those assets, subject to the Fund's investment objectives and policies and to the Manager's supervision.

5. Each Fund currently has a single subadviser, except for the American Odyssey Emerging Opportunities Fund, which has two subadvisers. AOF may employ multiple subadvisers for any Fund in the future. Currently, subadvisers' fees are paid by the Manager out of the fees paid by a Fund to the Manager at rates negotiated by the Manager. The Manager pays each subadviser a fee using a formula based on average daily net assets of the Fund. At a special meeting held on April 23, 1997, persons having voting rights<sup>2</sup> approved a new Management Agreement between AOF and the Manager that will become effective only if the relief requested in the application is granted. Under the new Management Agreement, AOF would pay all subadvisory fees directly, rather than paying those fees to the Manager (who would then pay the appropriate fee to each subadviser), based upon net assets

<sup>1</sup> Applicants request that the order exempt all current and future series of AOF.

<sup>2</sup> Depending upon applicable law or the terms of the insurance contract or qualified plan, the right to vote shares is held by contract owners, insurance companies, plan participants, or plan trustees (collectively, "persons having voting rights").

allocated to the subadviser. The new Management Agreement would authorize AOF and the Manager to enter into new subadvisory agreements at fee rates different than the current ones, provided that any new fee rate is less than or equal to a maximum fee rate approved by persons having voting rights with respect to the applicable Fund. These maximum fee rates are slightly higher than the fee rates currently in effect in order to provide AOF and the Manager some flexibility if they determine they can obtain superior subadvisory services by paying slightly higher fees.

6. Applicants request an exemption to permit the Manager and AOF to enter into and amend subadvisory agreements without approval by persons having voting rights with respect to the Funds. The Management Agreement between the Manager and AOF would continue to be subject to the shareholder voting requirements of section 15(a).

#### **Applicants' Legal Analysis**

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

2. Applicants believe that under AOF's manager/subadviser structure, subadvisers take the place of individual portfolio managers in a conventional fund context. Applicants state that investors expect the Manager to select and retain subadvisers who successfully meet the Fund's objectives and policies and replace those who do not. Applicants assert that persons having voting rights have determined to rely on the Manager's ability to select, monitor, and terminate subadvisers. Applicants contend that requiring shareholder approval of subadvisers and subadvisory agreements would impose costs on the Funds without advancing shareholder interests.

3. Applicants will not enter into or amend any subadvisory agreement that would increase the subadvisory fee beyond the maximum fee approved by persons having voting rights with respect to the applicable Fund, without such agreement, including the compensation to be paid thereunder, being approved by the persons having

voting rights with respect to the applicable Fund.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that 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 believe that the requested relief meets this standard.

#### **Applicants' Conditions**

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

1. Before any Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority vote of persons having voting rights with respect to the Fund, or, in the case of a new Fund whose prospectus contains the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, any such Fund will hold itself out to the public as employing the "manager/subadviser" structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the subadvisors and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to AOF and, subject to the review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend subadvisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among subadvisers; (d) monitor and evaluate subadviser performance; and (e) oversee subadviser compliance with the applicable Fund's investment objective, policies, and restrictions.

4. A majority of the Fund's Board will be persons who are not "interested persons" (as defined in section 2(a)(19) of the Act) of AOF ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

5. AOF will not enter into a subadvisory agreement with any subadviser that is an "affiliated person" of the Fund (as defined in section 2(a)(3) of the Act) ("Affiliated Subadviser") other than by reason of serving as subadviser to one or more Funds without such subadvisory agreement, including the compensation to be paid thereunder, being approved by the persons having voting rights with respect to the applicable Fund.

6. When a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the applicable Fund and persons having voting rights with respect to that Fund and that such change does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives inappropriate advantage.

7. No director, trustee, or officer of AOF or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a subadviser except for ownership of (a) interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a subadviser or an entity that controls, is controlled by, or is under common control with a subadviser.

8. Within 90 days of the hiring of any new subadviser, the Manager will furnish person having voting rights with respect to the appropriate Fund with all information about the new subadviser or subadvisory agreement that would be included in a proxy statement. Such information will include any changes caused by the addition of a new subadviser. To meet this condition, the Manager will provide persons having voting rights with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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