

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27653; 812-13319]

New River Funds and New River Advisers LLC; Notice of Application

January 3, 2007

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

Action: Notice of an application for an order 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 the 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: New River Funds (“Trust”), and New River Advisers LLC (“Manager”).

Filing Dates: The application was filed on August 1, 2006, and amended on December 27, 2006.

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 January 29, 2007 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, c/o Doit L. Koppler II, New River Advisers LLC, 1881 Grove Avenue, Radford, VA 24141.

For Further Information Contact: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Julia Kim Gilmer, Branch Chief, at (202) 551-6871 (Office of Investment Company Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of two series ("Funds"), each with separate investment objectives, policies, and restrictions.¹ The Manager, a Virginia limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment manager to the Trust and each of the Funds pursuant to an investment management agreement ("Management Agreement"). The Management Agreement has been approved by the Trust's board of trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the

¹ Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Manager; (b) uses the management structure as described in the application; and (c) complies with the terms and conditions of the application (included in the term "Fund"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager will precede the name of the Sub-Adviser.

Act, of the Trust or the Manager (“Independent Trustees”), as well as by the shareholders of each Fund.

2. Under the Management Agreement, the Manager is responsible for providing investment advisory and administrative services to the Funds, subject to oversight by the Board. The Management Agreement permits the Manager to enter into a separate sub-advisory agreement (“Sub-Advisory Agreement”) with one or more sub-advisers (each, a “Sub-Adviser”) to carry out the investment program of a Fund, subject to the approval of the Board and the shareholders of the Fund. The Adviser has entered into Sub-Advisory Agreements with two Sub-Advisers. Each Sub-Adviser is registered as an investment adviser under the Advisers Act. The Manager monitors and evaluates the Sub-Advisers and makes recommendations to the Board, regarding their hiring, retention and termination. The shareholders and the Board, including a majority of the Independent Trustees, approve the Sub-Advisory Agreements. The Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Management Agreement.

3. Applicants request relief to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements for the Funds without shareholder approval. The requested relief will not extend to any Sub-Adviser that is an “affiliated person,” as defined in section 2(a)(3) of the Act, of a Fund or of the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds (“Affiliated Sub-Adviser”).

4. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose the fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit each Fund to disclose, both as a dollar amount and as a percentage of a Fund’s net assets: (a) the aggregate fees paid to the Manager and Affiliated Sub-

Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (“Aggregate Fee Disclosure”). For any Fund that employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to such Affiliated Sub-Adviser.

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 under 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 company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 14(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 an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (“1934 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 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. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

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

6. 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 provisions 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 their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that permitting the Manager to hire or change Sub-Advisers without incurring the unnecessary delay and expense of obtaining shareholder approval of each Sub-Advisory Agreement is appropriate in the interest of the Fund's shareholders and will allow each Fund to potentially operate more efficiently. Applicants assert that the shareholders have an expectation that the Manager will select the most appropriate Sub-Adviser. Applicants compare the role of Sub-Advisers to that of individual portfolio managers employed by traditionally managed funds. Applicants note that the Management Agreements will continue to be subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that many investment advisers charge their customers for advisory services according to a "posted" fee schedule. Applicants state that while investment advisers typically are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit

that the requested relief will encourage Sub-Advisers to negotiate lower sub-advisory fees with the Manager.

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 requested order, the operation of the Fund in the manner described in this application will be approved by a majority of the Fund's outstanding voting securities (as such term is defined in Section 2(a)(42) of 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 initial shareholder(s) 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 this application. Each Fund relying on the order will hold itself out to the public as employing the manager-of-managers arrangement described in this application. The prospectus relating to each Fund will prominently disclose that its Manager has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser for a Fund, the affected Fund's shareholders will be furnished all information about the new Sub-Adviser that would be included in a proxy statement except as modified to permit the Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. To meet this condition, the Fund will provide shareholders within 90 days of the hiring of a new Sub-Adviser with an information statement meeting the

requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

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

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

6. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, 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 such Fund and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

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

8. No trustee or officer of the Trust, or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such

person) any interest in a Sub-Adviser except for: (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

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

10. 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.

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

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

13. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

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

Nancy M. Morris
Secretary