

notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

#### Additional Information

“Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans,” originally scheduled for February 4, 2003, has been canceled.

By a vote of 5-0 on January 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission’s rules that “Affirmation of Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation); Licensing Board’s referral in LBP-02-23 of its denial to admit terrorism contentions/issues” be held on January 23, and on less than one week’s notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: [www.nrc.gov/what-we-do/policy-making/schedule.html](http://www.nrc.gov/what-we-do/policy-making/schedule.html)

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: January 23, 2003.

**David Louis Gamberoni,**  
Technical Coordinator, Office of the Secretary.

[FR Doc. 03-2040 Filed 1-24-03; 2:00 pm]

BILLING CODE 7590-01-M

## POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

*Times and Dates:* 12:30 p.m., Monday, February 3, 2003; 8:30 a.m., Tuesday, February 4, 2003.

*Place:* Las Vegas, Nevada, at the Four Seasons Hotel, 3960 Las Vegas Boulevard South, in the Four Seasons Ballroom 4.

*Status:* February 3—12:30 p.m. (Closed); February 4—8:30 a.m. (Open).

*Matters To Be Considered:*

**Monday, February 3—12:30 p.m. (Closed)**

1. Financial Performance.
2. Rate Case Planning.
3. Strategic Planning.

4. Personnel Matters and Compensation Issues.

### Tuesday, February 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 6-7, 2003.
2. Remarks of the Postmaster General and CEO.
3. Appointment of Members to Board Committees.
4. Corporate Flats Strategy.
5. Capital Investment.
  - a. Labor Scheduler—Phase 1.
6. Pacific Area and Nevada-Sierra District Report.
7. Tentative Agenda for the March 3-4, 2003, meeting in Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L’Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

**William T. Johnstone,**

Secretary.

[FR Doc. 03-2050 Filed 1-24-03; 2:14 pm]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25908; File No. 812-12837]

### The Travelers Insurance Company, et al.

January 21, 2003.

**AGENCY:** Securities and Exchange Commission (“SEC” or “Commission”).

**ACTION:** Notice of application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (“1940 Act” or “Act”) approving the terms of an offer of exchange.

*Applicants:* The Travelers Insurance Company (“Travelers Insurance”), The Travelers Life and Annuity Company (“Travelers Life”), The Travelers Fund U for Variable Annuities (“Fund U”), The Travelers Separate Account Five for Variable Annuities (“Account Five”), The Travelers Separate Account Six for Variable Annuities (“Account Six”), Travelers Growth and Income Stock Account (“Account GIS”), Travelers Money Market Account (“Account MM”), Travelers Quality Bond Account (“Account QB”), Travelers Timed Aggressive Stock Account (“Account TAS”), Travelers Timed Growth and Income Stock Account (“Account TGIS”), Travelers Timed Short-Term Bond Account (“Account TSB”), and Travelers Distribution LLC (“Travelers Distribution”) (Fund U, Account GIS, Account MM, Account QB, Account TAS, Account TGIS, and Account TSB, collectively, “UA Accounts”) (Account

Five and Account Six, collectively (“TRA Accounts”) (Travelers Insurance, Travelers Life, UA Accounts, TRA Accounts, and Travelers Distribution, collectively, the “Applicants”).

**SUMMARY:** Applicants seek an order pursuant to section 11(a) of the Act approving the terms of a proposed offer of exchange. Under the terms of the proposed exchange, certain contract owners of Universal Annuity contracts offered by Travelers Insurance (the “UA contracts”) through the UA Accounts would be offered the opportunity to exchange their variable annuity contracts for the Travelers Retirement Account annuity contracts (the “TRA contracts”) offered by Travelers Insurance and Travelers Life through the TRA Accounts.

**DATES:** The application was filed on June 17, 2002, and amended and restated on December 4, 2002.

*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 Secretary of the Commission 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 February 14, 2003, 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 Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Kathleen A. McGah, Esq., The Travelers Insurance Company, One Tower Square, Hartford, CT 06183.

**FOR FURTHER INFORMATION CONTACT:** Leland B. Erickson, Staff Attorney, or Zandra Y. Bailes, 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 Commission’s Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants’ Representations

1. Travelers Insurance is a stock insurance company. It is licensed to conduct life insurance business in all fifty states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin

Islands, the British Virgin Islands, and the Bahamas. Travelers Insurance is an indirect wholly owned subsidiary of Citigroup Inc.

2. Travelers Life is a stock insurance company. It is licensed to conduct life insurance business in a majority of the states of the United States, the District of Columbia, and Puerto Rico, and intends to seek licensure in the remaining states, except New York. Travelers Life is an indirect wholly owned subsidiary of Citigroup Inc.

3. Travelers Insurance established Fund U as a separate account on May 16, 1983. Fund U is divided into subaccounts, 35 of which are offered in the UA contracts. Fund U is registered with the Commission as a unit investment trust under the 1940 Act.<sup>1</sup>

4. Travelers Insurance established Accounts GIS, QB, MM, TGIS, TSB and TAS as managed separate accounts on the following dates: Account GIS—September 22, 1967; Account QB—July 29, 1974; Account MM—December 29, 1981; Accounts TGIS and TSB—October 30, 1986; and Account TAS—January 2, 1987. Each managed separate account is registered with the Commission as a diversified open-end management investment company under the 1940 Act.<sup>2</sup>

5. Travelers Insurance established Account Five as a separate account on June 6, 1998. Account Five is divided into subaccounts, 61 of which are offered in the TRA contracts. Account Five is registered with the Commission as a unit investment trust under the 1940 Act.<sup>3</sup>

6. Travelers Life established Account Six on June 6, 1998. Account Six is divided into subaccounts, 61 of which are offered in the TRA contracts. Account Six is registered with the Commission as a unit investment trust under the 1940 Act.<sup>4</sup>

7. Under Connecticut law, the assets of each respective separate account ("Account") attributable to the Contracts are owned either by Travelers Insurance or Travelers Life, but are held separately from the other assets of Travelers Insurance or Travelers Life for the benefit of the owners of, and the persons entitled to payment under those contracts. Income, gains and losses, whether or not realized, from the assets of each Account are credited to or charged against that Account without

regard to the other income, gains, or losses of Travelers Insurance or Travelers Life. In addition, the assets of any such Account equal to the reserves and other contract liabilities with respect to that Account are not chargeable with liabilities arising out of any other business Travelers Insurance or Travelers Life may conduct.

8. Travelers Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the NASD. Travelers Distribution serves as the principal underwriter for the UA and TRA contracts, and is affiliated with Travelers Insurance and Travelers Life.

9. Each contract is a flexible premium variable annuity contract. Travelers Insurance registered the UA contracts under the Securities Act of 1933 on Form N-4 (File No. 2-79529); Travelers Insurance and Travelers Life registered the TRA contracts under the Securities Act of 1933 on Form N-4 (File Nos. 333-58783 (Account Five) and 333-58809 (Account Six)).<sup>5</sup> Each contract may be used in connection with certain types of retirement plans that receive favorable treatment under the Internal Revenue Code of 1986, as amended, (the "Code") ("Qualified Contracts"), and the UA contract may be issued to an owner who is not purchasing the contract for use in such tax-favorable retirement plans ("Non-Qualified Contracts"). Each contract provides for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provides for settlement or annuity payment options on a variable or fixed basis.

#### Universal Annuity Contract

10. Travelers Insurance issues the UA contract to individuals or groups.<sup>6</sup> An owner may purchase a UA contract for a minimum initial payment of \$1,000 for a Non-Qualified Contract or an IRA contract (\$20 for a Qualified Contract), and submit additional payments of \$100 (\$20 for a Qualified Contract) thereafter.

11. An owner may allocate his or her payments to and transfer cash value among the variable funding options and the Fixed Account (where the current interest rate is 3.5%). The variable funding options include six managed separate accounts (Account GIS, Account MM, Account QB, Account

TAS, Account TGIS, and Account TSB) and one UIT/separate account, Fund U. Fund U has 34 subaccounts that are available for investment by UA owners. Each subaccount of Fund U invests in shares of a fund or portfolio of a mutual fund.

12. An owner may transfer all or a portion of his or her investment between and among the UA Accounts and the Fixed Account and may make transfers between the Fixed Account and the VA Accounts. Certain limitations, however, may apply. Travelers Insurance currently does not charge for such transfers, but reserves the right to assess such a charge in the future.

13. An owner may elect to enter into a separate advisory agreement with CitiStreet Financial Services LLC ("CitiStreet"), an affiliate of Travelers Insurance and Travelers Life and an investment adviser registered under the Investment Company Act of 1940. For a fee, CitiStreet provides asset allocation advice under either its CHART Program® or its Tactical Asset Allocation Program. Under the CHART Program®, CitiStreet will allocate all of an owner's purchase payments among the CitiStreet Funds available in the UA Contract. Under the Tactical Asset Allocation Program, CitiStreet will transfer an owner's contract value among TGIS, TSB and TAS (the "Market Timed Accounts"). An owner also may invest in the Market Timed Accounts through an asset allocation program of an adviser not affiliated with Travelers Insurance, subject to the approval of Traveler's Insurance; and an owner may invest in those Accounts without the assistance of an investment adviser. However, if an owner invests in the Market Timed Accounts without a tactical asset allocation agreement, he or she may bear a higher proportion of the expenses associated with separate account portfolio turnover.

14. A UA owner may surrender his or her UA contract or make a withdrawal of that contract's cash surrender value at any time before the contract's maturity date. In addition, an owner may take withdrawals using a systematic withdrawal program. An owner may instruct Travelers Insurance to calculate and make the minimum distributions that may be required by the Internal Revenue Service upon the owner's reaching age 70½.

15. There are various charges and deductions made under the UA contract. Travelers Insurance assesses a mortality and expense risk charge against the assets of the managed separate accounts and Fund U in an amount, computed daily, at an annual

<sup>1</sup> File No. 811-3575.

<sup>2</sup> File No. 811-1539 (Account GIS); File No. 811-2571 (Account QB); File No. 811-3409 (Account MM); File No. 811-5090 (Account TGIS); File No. 811-5089 (Account TSB); and File No. 811-5091 (Account TAS).

<sup>3</sup> File No. 811-08867.

<sup>4</sup> File No. 811-08869.

<sup>5</sup> There is a market value adjustment feature under the TRA contract. Each Company registered this feature with the Commission on Form S-2 under the Securities Act of 1933 (File Nos. 333-69793 (Travelers Insurance) and 333-69753 (Travelers Life)).

<sup>6</sup> For the purposes of this notice, the term "contract" includes a certificate under a group contract, and the term "owner" includes participant under a group contract.

rate of 1.25% of the daily net asset value of those Accounts. Travelers Insurance also assesses a semiannual contract administrative charge of \$15.

16. Travelers Insurance assesses charges for certain transactions an owner may make under the UA contract. If an owner surrenders his contract or takes a withdrawal, Travelers Insurance may assess a contingent deferred sales charge of 5% of the payment surrendered or withdrawn if the owner surrenders or withdraws the payment within five years of the payment's date. However, beginning in the second contract year, the owner may withdraw up to 10% of the cash value of his or her contract annually without Travelers Insurance assessing the contingent deferred sales charge. Travelers Insurance also reserves the right to assess a transfer charge on transfers an owner may make among the investments options available in the UA contract.

17. Each underlying fund and managed separate account has its own fees and expenses. Total annual operating expenses for the variable funding options range from .26% to 2.11% (based on the average daily net assets of the funding option, after expense reimbursement, as of December 31, 2001). Some of the underlying funds charge a 12b-1 fee against their assets. The total annual operating expenses for the Market Timed Accounts include market timing fees equal on an annual basis to 1.25% of the current value of the assets participating in the Tactical Asset Allocation program with CitiStreet. Travelers Insurance deducts this fee daily from the assets of the Market Timed Accounts. CitiStreet also charges a \$30 Tactical Asset Allocation application fee.

18. Travelers Insurance will deduct charges for any premium tax or other tax levied by any governmental entity from payments or cash value at death, surrender or annuitization, but no earlier than the time the contract incurs the tax.

19. If the owner or annuitant dies before an UA contract's maturity date, Travelers Insurance will pay the beneficiary a death benefit. The amount paid on the death of the annuitant depends on the age of the annuitant at death. If the annuitant dies on or after age 75, Travelers Insurance will pay the beneficiary the cash value of the contract. If the Annuitant dies before age 75, and before the maturity date, Travelers Insurance will pay the beneficiary the greater of: (a) Cash value; (b) total purchase payments made; or (c) the cash value on the most recent 5th multiple contract year anniversary less

any withdrawals made since that anniversary before Travelers Insurance receives proof of death. If an owner who is not the annuitant dies before the maturity date, Travelers Insurance will pay the beneficiary the cash value of the contract. If any owner or annuitant dies on or after the maturity date, Travelers Insurance will pay the beneficiary any benefit remaining under the annuity or income option then in effect.

20. If the annuitant is living on the maturity date, Travelers Insurance will pay the owner or his or her designated payee annuity or income payments beginning on that date. These payments may be in a single lump-sum payment, under five annuity options (*i.e.*, payments made based on the life of the annuitant), under three income options (*i.e.*, payments made for a fixed time not based on the life of the annuitant), or under any other mutually agreed upon annuity option. The owner may choose whether he or she would like all or part of his or her annuity payments to be made on a fixed or variable basis.

#### TRA Contract

21. Travelers Insurance and Travelers Life (depending on the state where the owner purchases the contract) issue the TRA contract to individuals or groups. An owner may purchase a TRA contract for a minimum initial payment of \$20,000 and submit additional payments of \$5,000 thereafter. Travelers Insurance/Travelers Life will add a purchase payment credit to each purchase payment that an owner makes if that owner elects the optional death benefit. Each company funds the purchase payment credits from the assets of its general account. The companies assess a higher mortality and expense risk charge for the optional death benefit, but will not require the owner to repay the amount of purchase payment credit to the relevant company should the owner surrender after the "right to return" period or take a withdrawal from his or her contract. Specifically, during the "right to return" period, a TRA owner who surrenders and who elects the optional death benefit will receive either purchase payments or contract value, depending on applicable state law; the owner will not bear any contract fees associated with the purchase payment credits. Should the owner exercise his or her "right to return" rights, the owner will be in the same position as if he or she had exercised the "right to return" right in a variable annuity contract that did not have purchase payment credits. The owner would, however, receive any gains, and the relevant company would

bear any losses attributable to the purchase payment credits.

22. An owner may allocate his or her payments to and transfer cash value among the variable funding options and the Fixed Account (where the current interest rate is 4% annually). Account Five and Account Six offer the same underlying fund options; each separate account has 61 subaccounts that are available for investment by TRA contract owners. These subaccounts invest in shares of a fund or portfolio of a mutual fund.

23. Subject to certain restrictions, an owner may transfer all or a portion of his or her investment between and among the subaccounts and the Fixed Account and between the Fixed Account and the subaccounts. Travelers Insurance and Travelers Life currently do not charge for transfers, but reserve the right to assess a transfer charge of up to \$10 on transfers exceeding 12 per year.

24. An owner may elect to enter into a separate advisory agreement with CitiStreet. For a fee, CitiStreet provides asset allocation advice under its CHART Program®.

25. A TRA owner may surrender his or her TRA contract or make a withdrawal of that contract's cash value at any time before the contract's maturity date. In addition, an owner may take withdrawals using a systematic withdrawal program. An owner also may choose to participate in the Managed Distribution Program, under which the owner may instruct Travelers Insurance/Travelers Life to calculate and make the minimum distributions that may be required by the Internal Revenue Service upon the owner's reaching age 70½.

26. There are various charges and deductions made under the TRA contract. Travelers Insurance/Travelers Life assesses a mortality and expense risk charge against the assets of Account Five/Account Six in an amount, computed daily, at an annual rate of .80% of the daily net asset value if the owner elects the standard death benefit, or 1.25%, if the owner elects the optional death benefit.

27. Travelers Insurance/Travelers Life will assess charges for certain transactions an owner may make under the TRA contract. If an owner surrenders his contract or makes a withdrawal, Travelers Insurance/Travelers Life may assess a withdrawal charge if the owner surrenders or withdraws the payment within five years of when the owner made that payment.

The charge is a percentage of the purchase payment and any applicable

purchase payment credits withdrawn as follows:

Years since purchase payment made	Withdrawal charge (in percent)
0–1 .....	5
2 .....	4
3 .....	3
4 .....	2
5 .....	1
6 or more .....	0

However, subject to the provisions of the Code, an owner may withdraw up to 20% of the contract value of his or her contract annually without Travelers Insurance/Travelers Life assessing the withdrawal charge.

28. In addition, should a group contract owner surrender its TRA contract (other than because of plan termination due to the dissolution or liquidation of the employer under U.S. Code Title 11 procedures), or should Travelers Insurance/Travelers Life discontinue the TRA contract, Travelers Insurance/Travelers Life will assess a market value adjustment on any contract value held in the Fixed Account. The market value adjustment will reflect the relationship between the interest rate credited to amounts in the Fixed Account at the time of termination and the interest rate credited on new deposits in the Fixed Account at the time of termination.

29. Each underlying fund has its own fees and expenses. Total annual operating expenses for the variable funding options range from .40% to 1.72% (based on the average daily net assets of the funding option, after expense reimbursement, as of December 31, 2001). Some of the underlying funds charge a 12b–1 fee against their assets.

30. Should an owner elect to participate in the CHART® program, the owner will be charged for the investment advisory services CitiStreet provides. This charge is equal to a maximum of .80% of the assets subject to the CHART® Program, and will be paid by quarterly withdrawals from the contract value allocated to the asset allocation funds.

31. As discussed below, Travelers Insurance/Travelers Life offers a Variable Annuitization Floor Benefit. If the owner elects this option during the annuitization period, Travelers Insurance/Travelers Life will deduct a charge upon election; the charge will vary based on market conditions, but will never increase an owner's annual separate account charge by more than 3%. An owner also may elect a liquidity benefit on certain options during the annuitization period (as discussed

below). If the owner elects the liquidity benefit and takes a withdrawal, Travelers Insurance/Travelers Life will charge a surrender charge of 5% on the amounts withdrawn.

32. If the owner or annuitant dies before a TRA contract's maturity date, Travelers Insurance/Travelers Life will pay the beneficiary a death benefit. The amount paid on death of the annuitant depends on the age of the annuitant on the contract date and the death benefit option selected. Under the standard death benefit, if the annuitant's age on the contract date was less than age 80, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value or the total purchase payments made less any withdrawals (and related charges). If the annuitant's age on the contract date equaled or was greater than age 80, Travelers Insurance/Travelers Life will pay the beneficiary contract value.

33. Under the optional death benefit, if the annuitant's age on the contract date was less than age 70, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value, total purchase payments less any withdrawals (and related charges), or maximum step-up value (described below) associated with contract date anniversaries beginning with the 5th and ending with the last before the annuitant's 76th birthday. If the annuitant's age on the contract date was between 70 to 75, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value, total purchase payments less any withdrawals (and related charges), or the step-up death benefit value associated with the 5th contract date anniversary. If the annuitant's age on the contract date was between ages 76 to 80, Travelers Insurance/Travelers Life will pay the beneficiary the greater of contract value or total purchase payments less any withdrawals (and related charges). If the beneficiary was over age 80 on the contract date, Travelers Insurance/Travelers Life will pay the beneficiary contract value. Travelers Insurance/Travelers Life will establish a separate step-up death benefit value on the fifth contract date anniversary and on each subsequent contract date anniversary on or before the date the death is reported to the company. The step-up death benefit value initially equals the contract value on that anniversary. After a step-up death benefit value has been established, Travelers Insurance/Travelers Life will recalculate it each time a purchase payment is made or a withdrawal is taken.

34. If the annuitant is living on the maturity date, Travelers Insurance will pay the owner or his or her designated payee annuity payments beginning on that date. These payments may be in a single lump-sum payment, under any combination of five annuity/income options, or under any other option mutually agreed upon. Should the owner elect to apply his or her contract value to purchase an annuity, Travelers Insurance/Travelers Life, where permitted by law, will add an annuitization credit to the amount applied to purchase the annuity. The credit equals .5% of contract value if the owner annuitizes during contract years 2–5, 1% during contract years 6–10, and 2% after contract year 10.

35. Travelers Insurance/Travelers Life offers four annuity/income options on a fixed or variable basis; the fifth option is offered only on a fixed payment basis. For fixed annuities, an owner may elect to receive a level payment or a payment that will increase by a certain percentage chosen by the owner.

36. Travelers Insurance/Travelers Life will offer two optional annuity benefits. Under the variable annuitization floor benefit, Travelers Insurance/Travelers Life guarantees that, regardless of the performance of the funding options the owner selects, the owner's annuity payments will never be less than a certain percentage of the owner's first variable annuity payment. This percentage will vary depending on market conditions, but will never be less than 50%. As previously discussed, there is a charge for this benefit.

37. Under the liquidity benefit, if an owner selects any annuity option which guarantees payments for a minimum period of time (either a life annuity with a number of payments assured or a fixed annuity), the owner may take a lump sum payment any time after the first contract year. There is a surrender charge of 5% of the amount withdrawn under this option.

#### Comparison of the UA and TRA Contract Features

38. Applicants submit that the features and benefits of the TRA contract, in almost every respect, are more favorable than under the UA contract.

39. Applicants note that there is a higher threshold for purchase payments under the TRA contract than under the UA contract and that there are fewer funding options available under the UA contract than under the TRA contract. Asset allocation, systematic withdrawal programs, and a Managed Distribution Program are available in both the UA contract and the TRA contract. There is,

however, an additional asset allocation program available under the UA contract, the Tactical Asset Allocation program, that is not offered in the TRA contract.

40. An owner may invest in the Fixed Account under each of the contracts. However, under certain situations, a group contract owner may be assessed a market value adjustment for amounts withdrawn from the Fixed Account under the TRA contract.

41. The UA and TRA contracts provide for similar annuity payment options, but differ greatly on the benefits available during the annuitization period. The UA contract provides for five annuity options and the TRA contract provides for a choice of five annuity options. The UA contract offers three income options; the TRA contract offers one income option. It is the optional features that set the contracts apart and make the point that the focus of the TRA contract is retirement income. The TRA contract provides for several benefits during the annuitization period, including a liquidity option, an annuitization credit, a variable annuitization floor benefit, and an increasing benefit option for fixed annuities. These benefits are not available under the UA contract.

42. The death benefit under the UA contract is, under certain circumstances, potentially not as generous as the standard death benefit under the TRA contract. There is an optional death benefit available for a fee under the TRA contract that provides owners with purchase payment credits and a potentially more generous benefit.

43. Each contract allows the owner to take a withdrawal at any time before the maturity date. However, the free withdrawal amount available under the UA contract is less than what is available under the TRA contract. A systematic withdrawal option and a Managed Distribution Program are offered in both the UA and TRA contracts.

44. Applicants represent that the fees and charges of the basic TRA contract will be no higher than those of the UA contract.

45. Asset-based charges are higher under the UA contract than they are under the TRA contract. Under the UA contract, Travelers Insurance imposes a mortality and expense risk charge as a percentage of average daily net assets of UA Accounts of 1.25% annually. Under the TRA contract, Travelers Insurance/Travelers Life imposes a mortality and expense risk charge as a percentage of average daily net assets of Account Five or Account Six, as relevant, of .80% for

the standard death benefit and 1.25% for the enhanced death benefit.

46. Under the UA contract, the owner is assessed a semiannual administrative charge of \$15. This charge is not assessed under the TRA contract.

47. Currently, under both the UA contract and TRA contract, no transfer charge is assessed. However, under each contract, the company reserves the right to assess the charge in the future.

48. The contingent deferred sales charge is higher under the UA contract than it is under the TRA contract. Under the UA contract, a contingent deferred sales charge of 5.00% is assessed if a purchase payment is withdrawn within 5 years after that purchase payment is made. The charge does not decline. Similarly, under the TRA contract a withdrawal charge is assessed if a purchase payment (including applicable credits) is withdrawn within 5 years after that payment is made. However, unlike with the UA contract, under the TRA contract the withdrawal charge declines each year so that the amount of the charge is 0% if the purchase payment is withdrawn 5 or more years after the purchase payment is made.

#### Proposed Exchange

49. Applicants propose to offer eligible owners of UA contracts the opportunity to exchange their UA contracts for TRA contracts. To be eligible to participate in the exchange offer:

- The UA owner must have purchased his or her contract in connection with a retirement plan that met the requirements under section 403(b) or 457 under the Code;
- The plan under which the UA owner purchased his or her contract no longer uses The Travelers Insurance Company as its primary insurance carrier for the employer's section 403(b) or 457 plan or the UA owner no longer actively contributes to his or her contract;
- The UA owner meets the minimum eligibility requirements to purchase the TRA contract (*i.e.*, the owner must be at least 40 years of age and make an initial purchase payment of at least \$20,000); and
- The UA owner's contract must be at least 5 years old.

Applicants submit that the program will be beneficial to owners who, because of the terms of their employer's 403(b) or 457 plan, may no longer be able to contribute to their UA contract because it provides such owners the opportunity to invest in the lower cost TRA contract that offers them innovative death benefits options and more annuitization options (including

liquidity and guaranteed floor provisions).

50. After an initial notification of the exchange offer in quarterly reports or other communications to eligible UA contract owners and contacts made by Travelers Distribution's registered representatives, the exchange offer will be made by providing eligible owners of the UA contracts who express an interest in learning the details of the offer a prospectus for the TRA contract, accompanied by a letter explaining the offer, a piece of sales literature that compares the UA contract to the TRA contract, and an internal exchange form. The offering letter will advise owners of a UA contract that the exchange offer is specifically designed for those owners who intend to continue to hold their contracts as long-term investment vehicles. The letter will state that the offer is not intended for all owners, and that it is not appropriate for any owner who anticipates surrendering all or a significant part (*i.e.*, more than 20% on an annual basis) of his or her contract before the end of five years. Further, the letter will encourage owners to carefully evaluate their personal financial situations when deciding whether to accept or reject the exchange offer.

51. Applicants represent that the offering letter also will explain how an owner of a UA contract contemplating an exchange may avoid the applicable withdrawal charge on the TRA contract if no more than the "free withdrawal amount" is surrendered and any subsequent deposits are held until the expiration of the withdrawal period. In this regard, the offering letter will state in plain English that if the TRA contract is surrendered during the withdrawal charge period:

- Any purchase payment credit that the owner may receive if he or she elects the optional death benefit, may be more than offset by the withdrawal charge; and
- An owner may be worse off than if he or she had rejected the exchange offer.

52. An internal exchange application form, which will accompany the offering letter, will include an owner acknowledgement section with check-off boxes setting forth specific questions designed, among other things, to determine a contract owner's suitability for the exchange offer. In particular, the form will seek affirmative confirmation that an owner does not anticipate a need to withdraw more than 20% per year (plus earnings) from the TRA contract during the withdrawal period. Other questions on the form will seek owner acknowledgment that the exchange offer is suitable only for an owner if he or she

expects to hold the TRA contract through annuitization, and that the owner may be better off rejecting the exchange offer if he or she plans to surrender the TRA contract during the withdrawal period. All boxes on the form must be checked off with affirmative responses before Travelers Insurance/Travelers Life will process the exchange. After making a suitability determination, each broker-dealer will be required to forward completed forms to Travelers Insurance/Travelers Life for processing. In the event either company receives an incomplete form (*i.e.*, a form with one or more acknowledgment boxes not checked off), Travelers Insurance/Travelers Life will not process the exchange, treating the transaction as "not in good order." Travelers Insurance/Travelers Life intends to contact any broker-dealer who submits a form not in good order, however, in no event will Travelers Insurance/Travelers Life process exchange transactions based on incomplete forms.

53. Travelers Insurance/Travelers Life will apply the cash value of the UA contract, together with any applicable purchase payment credit, and any additional purchase payments submitted with an internal exchange application form for the TRA contract to the TRA contract on the exchange date. Travelers Insurance will not deduct a contingent deferred sales charge upon the surrender of a UA contract in connection with the exchange offer.

54. After expiration of the TRA contract's right to return period, surrenders and withdrawals will be governed by the terms of the TRA contract for purposes of calculating any withdrawal charge. This means, in part, that Travelers Insurance/Travelers Life will not recapture any purchase payment credit applied to the contract value of the TRA contract, unless the owner were to cancel the contract during the right to return period.

55. The exchange date will be the issue date of the TRA contract for purposes of determining contract years and anniversaries after the exchange date.

56. To accept the exchange offer, a UA contract owner must complete an internal exchange application form. Contract values under the TRA contract will be allocated according to owner instructions. Travelers Insurance/Travelers Life will assume purchase payments submitted with the internal exchange application form to be payments under the TRA contract as of the date of issue of the TRA contract.

57. UA owners who accept the exchange offer will not be subject to any

adverse tax consequences. The exchanges will constitute tax-free exchanges under section 1035 of the Code.

58. Travelers Insurance/Travelers Life will compensate broker-dealers in connection with the proposed exchange offer. These broker-dealers will receive the same compensation they would have received had there been a new sale of a TRA contract without the exchange program.

#### Applicants' Legal Analysis

1. Section 11 of the 1940 Act makes it unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules and regulations adopted under section 11. Section 11(c) of the 1940 Act, in pertinent part, makes section 11(a) applicable to an offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company, irrespective of the basis of the exchange. Accounts GIS, MM, QB, TAS, TGIS, and TSB are registered with the SEC as open-end diversified management investment companies, and Fund U and Accounts Five and Six are registered with the SEC as unit investment trusts. Accordingly, the proposed exchange offer is subject to section 11(a) under the 1940 Act and can only be made after the Commission has approved the terms of the offer under section 11(a). Applicants submit that the terms of the proposed exchange offer do not present the abuses section 11 was designed to prevent, and are consistent with public policy and Commission precedent.

2. As noted by the Commission when proposing rule 11a-3 under the 1940 Act, the purpose of section 11 of the Act is to prevent "switching." "Switching" is the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. This practice was found by Congress to be widespread in the 1930's before the adoption of the 1940 Act.

3. Section 11(c) of the 1940 Act requires Commission approval (by order or rule) of any exchange, regardless of

its basis, involving securities issued by a unit investment trust, because investors in unit investment trusts were found by Congress to be particularly vulnerable to switching operations. Applicants note that the legislative history of section 11 makes clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from investors.

4. Applicants represent that the terms of the proposed exchange offer do not present the abuses (*i.e.*, the additional sales charges that result from abusive switching practices) against which section 11 was designed to prevent. Applicants submit that the purpose of their exchange offer is not to earn additional sales commissions; rather, the purpose of the offer is to give investors, many of whom because of the terms of their employer's 403(b) and 457 plans may no longer be able to contribute towards their retirement, an opportunity to invest in a lower cost contract that has innovative death benefit and annuitization features. In stark contrast with the 9-10% front-end commission deducted in the "switching" exchanges that led to adoption of section 11, each UA owner accepting the exchange offer may be able to receive a 2% purchase payment credit added to each purchase payment should the owner elect the optional death benefit. The effect of the credit is to add to cash value at the time of the exchange. This credit provides a significant benefit to the owner because neither Travelers Insurance nor Travelers Life will recapture the amount of that credit should the owner make a withdrawal from or surrender his or her contract after the expiration of the TRA contract's right to return period. Further, the TRA contract offers the owner the opportunity to receive additional economic benefits upon annuitization. At that time, each company will add an annuitization credit to the value of an owner's contract. In addition, no sales charges will be imposed on amounts surrendered from a UA contract and applied to a TRA contract, and no sales charges ever will be paid on amounts rolled over in the exchange unless the TRA contract is surrendered before the expiration of the TRA contract's initial withdrawal charge period.

5. Rule 11a-2 permits an offer to exchange one variable annuity contract which has a contingent deferred sales load for another variable annuity contract which also has a contingent deferred sales load of the same or of an affiliated insurer without obtaining Commission approval, as long as (i) no

surrender charge is deducted at the time of the exchange, and (ii) in computing the surrender charge for the new contract, the insurer gives credit for the period during which the contract owner held the old contract (the "tacking requirement"). Amounts exchanged from a UA contract and deposited into the TRA contract are precluded from relying on rule 11a-2 because, in computing the withdrawal charge on amounts surrendered or withdrawn from a UA contract and deposited into the TRA contract, Travelers Insurance/Travelers Life will not give credit for the period during which the owner held the amount in the UA contract.<sup>7</sup> Applicants state that it is not economically feasible for Travelers Insurance/Travelers Life to "tack" for purposes of assessing the withdrawal charge under the TRA contract.

6. Applicants submit that tacking is not a requirement of section 11. Instead, it is a creation of rule 11a-2 designed to approve the terms of exchange offers "sight unseen." Congress adopted section 11 well before the first contingent deferred sales load.

7. Applicants state that tacking focuses on the closest thing to multiple deductions of sales charges that is possible in the contingent deferred sales charges context—*i.e.*, whether there are multiple sales loads upon surrender and redemption. Applicants note that if that safeguard, as well as other safeguards provided by rule 11a-2 are present, the Commission has determined that there is no need for it or its staff to evaluate the offer. Applicants submit that tacking should be viewed as a useful way to avoid the need to scrutinize the terms of an offer of exchange to make sure that there is no abuse; tacking should not be relevant in situations where the SEC will fully scrutinize the terms of an exchange offer. The absence of tacking does not mean that the proposed exchange offer is without clear benefits to investors. Applicants believe that the proposed exchange offer presents less potential for the type of abuses that led to the adoption of section 11 than in connection with exchanges that would be permitted under rule 11a-2.

8. Applicants submit that they are offering a beneficial investment opportunity to certain UA owners. The proposed exchange offer is offered to those owners many of whom, because of the terms of their employer's 403(b) or 457 plans, may no longer be able to contribute to their current UA contracts,

or to those UA owners who no longer actively contribute to his or her contract. Applicants represent that the proposed exchange offers such individuals the opportunity to once again contribute towards their retirement under the lower cost TRA contract. Far from being a way to extract additional charges from investors, as contemplated by the prohibitions of section 11, Applicants submit that the proposed exchange offer would assure, in most instances, an immediate and enduring economic benefit to investors. The 2% purchase payment credit would be applied immediately should the owner elect the optional death benefit, and the fact that asset-based and other charges would remain the same or be decreased by the exchange (asset-based charges only would be decreased if an owner were to elect the standard death benefit) would ensure that the benefit would endure. Further, Applicants note that the TRA contract offers several features which are not available under the UA contract which the UA contract owner may enjoy. These include: the optional death benefit with purchase payment credits, a greater free withdrawal amount (20% of contract value) without the imposition of the withdrawal charge, a declining withdrawal charge, an annuitization credit, a liquidity option during the annuitization period, and the ability to receive variable annuity payments in at least a certain minimum amount. Applicants believe that, in almost every respect, the proposed exchange would be beneficial to the offerees. Applicants represent that the only significant downside that may occur as a result of the exchange is if the owner, instead of holding his or her investment for the long-term, as variable annuity contracts are designed to be, surrenders or withdraws certain amounts from his or her TRA contract before the end of the withdrawal period.

9. Applicants state that the exchange offer will be available to all owners who meet the applicable eligibility and suitability standards on a voluntary basis. The decision to participate in the exchange offer will be made by each owner, after he or she has been given the opportunity to evaluate the proposed exchange offer. Applicants note that the offering letter from Travelers Insurance will give a UA contract owner a full explanation of both the advantages and disadvantages of the exchange.

10. Applicants submit that the proposed exchange offer is consistent with the purposes of the National Securities Improvement Act of 1996 ("NSMIA"). The purpose of NSMIA was

to promote competition and capital formation as well as to "eliminate[ ] burdens and enhance[ ] innovation and efficiency for investment companies."<sup>8</sup> These concepts are codified in section 2 of the 1940 Act. Applicants submit that the proposed exchange offer will promote competition because it will allow Travelers Insurance to retain business it otherwise might have lost because it is no longer the primary insurance carrier for certain 403(b) and 457 plans.

11. Applicants submit that there is ample precedent to support the various features of their exchange offer, including precedent relating to the compensation of salesmen, the granting of an order where the exchange might be disadvantageous to certain owners, and relief from rule 11a-2's tacking requirement.

### Conditions

If the requested order is granted, Applicants consent to the following conditions which are intended to support the understanding that the exchange offers are being made to owners who expect to persist:

1. The offering letter will contain concise plain English statements that: (a) The exchange offer is suitable only for UA owners who expect to hold their contracts as long-term investments; and (b) if the TRA contract is surrendered during the withdrawal charge period:

- Any purchase payment credit that the owner may receive if he or she elects the optional death benefit, may be more than offset by the withdrawal charge; and
- An owner may be worse off than if he or she had rejected the exchange offer.

2. Travelers Insurance/Travelers Life will provide a means of confirming that an owner choosing to participate in the exchange offer was told of the statements required in the offering letter (stated in condition no. 1). Travelers Insurance will send the offering letter directly to eligible UA owners. An owner choosing to participate in the program will then complete and sign an internal exchange form, which will prominently restate in concise, plain English the statements required in condition no. 1 and return it to Travelers Insurance. If the internal exchange form is more than two pages in length, Travelers Insurance will use a separate document to obtain owner acknowledgment of the statements required by condition no. 1.

<sup>7</sup> Applicants note that the proposed exchange may not be considered to be at relative net asset value because of the addition of the purchase payment credit to amounts exchanged into a TRA contract should the owner elect the optional death benefit.

<sup>8</sup> H.R. Conf. Rep. No. 104-864, at 40 (Sept. 28, 1996).



3. Travelers Insurance and Travelers Life, as appropriate, will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this condition no. 3, for review by the Commission upon request: (a) Records showing the level of exchange activity and how it relates to total number of owners eligible for the exchange offer (quarterly as a percentage of the number eligible); (b) copies of any form of offering letter and other written materials and scripts for presentations by representatives regarding the exchange offer (if Travelers Insurance prepared or approved the materials), including the dates(s) used; (c) records showing information about each exchange transaction that occurs, including the name of the owner; the UA contract and TRA contract number(s); contingent deferred sales charge waived at surrender of the UA contract; purchase payment credit applied, if any; registered representative's name, CRD number, firm affiliation, branch office address and telephone number, and the name of the registered representative's broker-dealer; commission paid; internal exchange form (and separate document, if any, used to obtain owner acknowledgment of the statements required in condition no. 1) showing the name, date of birth, address and telephone number of the owner, and date the internal exchange form (or separate document) was signed; amount of cash value exchanged; and persistency information relating to the TRA contract (date surrendered and withdrawal charge paid); and (d) logs showing any owner complaints about the exchange offer, state insurance department inquiries about the exchange offer, or litigation, arbitration or other proceedings regarding any exchange. The following information will be included on the logs: date of complaint or commencement of the proceeding; nature of the complaint or proceeding; and persons named or involved in the complaint or proceeding.

4. Records specified in condition no. 3(a) and (d) will be retained for six years from creation of record. Records specified in condition no. 3(b) will be retained for six years after the date of last use, and records specified in condition no. 3(c) will be retained for two years from the end of the initial withdrawal period of the TRA contract.

5. The offering letter will disclose in concise plain English each aspect of the TRA contract that is less favorable than the UA contract.

## Conclusion

For the reasons stated above, Applicants believe that the requested exemption in accordance with the standards of section 11(a), 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. 03-1810 Filed 1-27-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47231; File No. SR-OPRA-2002-01]

### Options Price Reporting Authority; Order Granting Permanent Approval to an Amendment To Establish a Best Bid and Offer Market Data Service

January 22, 2003.

On February 26, 2002, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 11Aa3-2 thereunder,<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan" or "Plan").<sup>3</sup> The proposed amendment would add to the Plan terms governing the provision by OPRA of a best bid and offer ("BBO") for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors.

Notice of the proposal was published in the **Federal Register** on March 15,

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> OPRA is a National Market System Plan approved by the Commission pursuant to section 11A of the Act and rule 11Aa3-2 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997).

2002.<sup>4</sup> The Commission received two comment letters on the proposed OPRA Plan amendment.<sup>5</sup> On May 30, 2002, OPRA submitted Amendment No. 1 to the proposal.<sup>6</sup> On June 13, 2002, OPRA submitted a letter in response to the comments.<sup>7</sup> On October 4, 2002, OPRA submitted Amendment No. 2 to the proposal.<sup>8</sup> On December 13, 2002, the Commission approved the proposal as modified by Amendment Nos. 1 and 2 on a temporary basis for 120 days, and solicited comment on Amendment Nos. 1 and 2.<sup>9</sup> The Commission received no comments on Amendment Nos. 1 and 2. This order approves the OPRA Plan amendment, as modified by Amendment Nos. 1 and 2, on a permanent basis.

Under the proposed Plan amendment, OPRA proposes to add a consolidated BBO service that would disseminate the best bid and offer for each options series, and OPRA would prioritize the BBO on the basis of price, size, and time. In addition, OPRA's BBO service could reflect an approximation of the quotation size associated with the best bid or offer actually available.

Under the proposal, OPRA vendors would have the option to disseminate to customers the consolidated BBO together with last sale reports for any series of options in place of OPRA's full market data service. In addition to the BBO service, OPRA would be obligated to continue to offer to vendors its full market data service, which includes the disseminated best bid and offer from each of OPRA's participant exchanges. The proposed amendment also would permit OPRA to contract with vendors separately for: (i) The last sale reports and the BBO; or (ii) for the last sale reports, the BBO, and quotation information from each market. OPRA also could contract separately with vendors for the full market data service that it currently offers.

<sup>4</sup> See Securities Exchange Act Release No. 45532 (March 11, 2002), 67 FR 11727.

<sup>5</sup> See letters from Devin Wenig, President, Investment Banking and Brokerage, Reuters America Inc., dated April 19, 2002, and George W. Mann, Jr., Executive Vice President and General Counsel, Boston Stock Exchange Inc., dated May 1, 2002, to Jonathan G. Katz, Secretary, Commission.

<sup>6</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division of Market Regulation ("Division"), Commission, dated May 29, 2002 ("Amendment No. 1").

<sup>7</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated June 12, 2002.

<sup>8</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA, to John Roeser, Special Counsel, Division, Commission, dated October 2, 2002 ("Amendment No. 2").

<sup>9</sup> See Securities Exchange Act Release No. 46992 (December 13, 2002), 67 FR 78031 (December 20, 2002).