

comparable credit quality. Entergy proposes, where required, to guarantee bank loans for EOI, ESI and SFA, up to the maximum amount each is authorized to borrow.

The Operating Companies and System Energy might issue commercial paper in the form of unsecured notes to mature within not more than 270 days, not prepayable, at a discount not in excess of the then-prevailing maximum discount rate for comparable paper. The commercial paper will be re-sold, with the customary discount, on a nonpublic basis to commercial banks, insurance companies, corporate pension funds, investment trusts, foundation, colleges and university funds, municipal and state funds and other financial and non-financial institutions that normally invest in commercial paper.

The Operating Companies and System Energy propose to use the proceeds from borrowings from the Money Pool and the issuance of short-term notes and commercial paper to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for the refunding, redemption, purchase or other acquisition of all or a portion of certain outstanding debt for general corporate purposes. EOI proposes to use the proceeds to finance its interim capital needs. ESI proposes to use the proceeds for the repayment of other borrowings and to fund its service company activities. SFI proposes to use the proceeds to repay other borrowings and to finance its fuel supply activities, including acquiring, owning and financing nuclear materials, related services, and the acquisition and ownership of fuel oil inventory. None of the proceeds authorized herein will be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company.

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

Margaret H. McFarland,  
*Deputy Secretary.*

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[Rel. No. IC-22192; File No. 812-9958]

### **The Travelers Insurance Company, et al.**

August 30, 1996.

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

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** The Travelers Insurance Company ("Travelers"), the Travelers Fund QP for Variable Annuities ("Account") and Tower Square Securities, Inc. ("Tower").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

#### **SUMMARY OF THE APPLICATION:**

Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of a morality and expense risk charge from the assets of the Account or other separate accounts established by Travelers in the future ("Other Accounts") to support certain group variable annuity contracts ("Current Contracts") as well as other variable annuity contracts that are materially similar to the Current Contracts ("Future Contracts," together with the Current Contracts, "Contracts"). Applicants request that such exemptive relief extend to any broker-dealer other than Tower that is affiliated with Travelers, is registered as a broker-dealer under the Securities Exchange Act of 1934, and may serve in the future as principal underwriter of the Contracts ("Future Underwriter").

**FILING DATES:** The application was filed on January 23, 1996. Amendments to the application were filed on July 31, 1996, August 15, 1996, and August 30, 1996.

**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 SEC 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 September 24, 1996, 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 requestor'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, Kathleen A. McGah, Counsel and Assistant Secretary, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183.

**FOR FURTHER INFORMATION CONTACT:** Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of

Insurance Products (Division of Investment Management), at (202) 942-0670.

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

#### **Applicants' Representations**

1. Travelers, a stock life insurance company organized in Connecticut and an indirect wholly-owned subsidiary of Travelers Group Inc., is the sponsor and depositor of the Account and will be the sponsor and depositor of any Other Account. Travelers is licensed to conduct life insurance and annuity business in all states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. and British Virgin Islands and the Bahamas.

2. The Account was established on December 25, 1995, as a separate account under Connecticut law to fund group flexible premium deferred variable annuity contracts and certificates. The Account is registered under the 1940 Act as a unit investment trust and will be used to fund the Contracts. The Account is divided into 27 subaccounts (the "Subaccounts"), each of which will invest solely in shares of a registered open-end management investment company or portfolio thereof.

3. Tower, an affiliate of Travelers and an indirect wholly-owned subsidiary of Travelers Group Inc., is the distributor of the Current Contracts. Tower is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the National Association of Securities Dealers, Inc. Any Future Underwriter will be affiliated with Travelers and registered as a broker-dealer under the 1934 Act.

4. The Current Contracts are designed to provide retirement payments and other benefits for persons covered under certain retirement plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons covered under retirement plans that do not qualify for such tax advantages. The Current Contracts may be sold on an allocated or unallocated basis. Purchase payments under the Current Contracts may be made by or on behalf of a participant in a Current Contract ("Participant") who is covered under a retirement plan.

5. The Current Contracts provide for, among other things: (a) minimum purchase payments; (b) allocation of purchase payments to one or more of the Account's Subaccounts, or to the fixed account, or both; and (c) several

fixed and variable annuity payment options. In addition, a death benefit is available under allocated Current Contracts. A death benefit is not available under unallocated Current Contracts, although one may be added to the unallocated Current Contracts in the future.

6. Under the death benefit for allocated Current Contracts, if the annuitant or the Current Contract owner dies before age 75 and before the maturity date, Travelers will pay as a death benefit an amount equal to the greater of (a) or (b) below, less any applicable premium tax:

(a) The cash value of the Participant's individual account; or

(b) Total purchase payments made to the Participant's individual account, less any surrenders not previously deducted.

If the annuitant or the Current Contract owner dies on or after age 75 and before the maturity date, Travelers will pay as a death benefit the value of the Participant's individual account, less any applicable premium tax and any surrenders not previously deducted.

7. The fees and charges assessed under the Current Contracts are likely to vary from one Current Contract to the next depending on the size of the Current Contract, the possible involvement of a third party administrator ("TPA") and a competitive bidding process which may include negotiation. The Current Contract design allows Travelers maximum flexibility, within the limitations imposed by law to custom design a charge structure which is likely to be acceptable to a prospective Current Contract owner. The application sets forth the maximum levels for each of the types of sales charges, mortality and expense risk charges, administrative expense charges and any allocation and transfer fees.

8. In most cases, only one of two administrative charges will apply to allocated Current Contracts. These charges cannot be increased during the life of the Current Contracts. The charges represent reimbursement of only the actual administrative costs expected to be incurred over the life of the Current Contracts and are not designed to yield a profit. Applicants will rely on Rule 26a-1 in deducting these charges.

9. A maximum semiannual policy fee of \$15 may be deducted from each Participant's individual account during the accumulation period. Travelers also may assess an annual administrative charge to compensate it for certain administrative and operating expenses of the underlying funds. The

administrative charge, equal to a maximum of 0.10% annually, may be deducted on each valuation date from amounts held in the underlying funds. This charge will apply during both the accumulation and the annuity periods.

10. The level of the semiannual policy fee and of the administrative expense charge during the accumulation period (but not the annuity period) is subject to negotiation. In determining the level of the semiannual fee and the administrative charge during the accumulation period, Travelers considers the following factors: (a) the size and characteristics of the Current Contract and the group to which it is issued, including the total annual amount of the purchase payments per Participant, the expected turnover of employees, whether the Current Contract owner will remit purchase payment allocations electronically, and any other factors pertaining to the characteristics of the group or the plan which may enable Travelers to reduce the expense of administration; (b) determination of Travelers' anticipated expenses in administering the Current Contract, such as billing for purchase payments, producing periodic reports, providing for the direct payment of Current Contract charges rather than having them deducted from Current Contract values, and any other factors pertaining to the level and expense of administrative services which will be provided under the Current Contract; and (c) the involvement of a TPA and/or agent.

11. No sales charge is deducted at the time purchase payments are applied under the Current Contracts. A contingent deferred sales charge or a surrender charge, as negotiated, will be assessed upon certain full or partial surrenders. The amounts obtained from the contingent deferred sales charge or surrender charge will be used to defray expenses incurred in the sale and marketing of the Current Contracts.

12. A sales charge may apply if all or part of the Current Contract value is surrendered during the first eight years following a purchase payment. The maximum contingent deferred sales charge is 5% of each purchase payment for a period of five years from the date the purchase payment was made. The maximum surrender charge is 5% of the amount surrendered for the first two Current Contract years; up to 4% in years three and four; up to 3% in years five and six; up to 2% in years seven and eight and 0% in the ninth year. The surrender charge cannot be increased during the life of the Current Contracts. Travelers does not expect that the contingent deferred sales charge will

cover sales and distribution expenses incurred in connection with the Current Contracts.

13. The contingent deferred sales charge and the surrender charge can be reduced or restructured if Travelers anticipates that it will incur decreased sales-related expenses because of the nature of the plan to which the Current Contract is issued or the involvement of a TPA. When considering a change in the sales charges, Travelers will take into account: (a) the expected level of initial agent or Travelers involvement during the establishment and maintenance of the Current Contract including the amount of enrollment activity required, and the amount of service required by the Current Contract owner; (b) Current Contract owner, TPA or agent involvement in conducting ongoing enrollment of subsequently eligible Participants; (c) the expected level of commission Travelers may pay to the TPA or agent for distribution expenses; and (d) any other factors which Travelers anticipates will increase or decrease the sales-related expenses associated with the sale of the Current Contract.

14. To compensate Travelers for assuming certain mortality and expense risks, Travelers will deduct a mortality and expense risk charge equal, on an annual basis, to 1.20% (approximately 0.90% for mortality risk and 0.30% for expense risk) of the average daily net assets allocated to each underlying fund.

15. The mortality and expense risk charge is subject to negotiation. In determining the level of the mortality and expense risk charge, Travelers will consider the size of the plan, the number of employees, plan participants, and the demographics of the participants which may reduce mortality and expense risks of the plan. Once established, this charge cannot be increased during the life of the Current Contract.

16. Travelers assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant under annuity obligations that involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under the Current Contracts. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. Applicants state that these amounts are guaranteed for the life of the Current Contracts. Travelers assumes additional mortality and certain expense risks under the Current

Contracts by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity option) upon the death of the annuitant or Current Contract owner prior to the maturity of the Current Contract.

17. Travelers assumes an additional expense risk because the maximum administrative charges may be insufficient to cover actual administrative expenses. These include the costs and expenses of: (a) processing purchase payments, death claims, annuity payments, surrenders and transfers; (b) periodic and other reports; (c) providing on-line information about the Current Contracts; (d) calculating mortality and expense risk charges; (e) preparing voting materials and tax reports; (f) updating registration statements for the Current Contracts; and (g) actuarial and other expenses.

18. If the mortality and expense risk charge and the administrative expense charges are insufficient to cover the expenses and costs assumed, the loss will be borne by Travelers. Conversely, if the amount deducted for the mortality and expense risk proves more than sufficient, the excess will represent profit to Travelers. Travelers does not expect to profit from administrative expense charges deducted from the Account under the Current Contracts; Travelers does expect to profit from the mortality and expense risk charge. Any profit realized from this charge will be available to Travelers for any proper corporate purpose, including, among other things, payment of distribution expenses.

19. Certain state and local governments impose premium taxes. Such taxes currently range from 0.5% to 5.0% and depend on the state of the Current Contract owner's residence or the state in which the Current Contract was sold. A deduction for premium taxes may be made when a Current Contract is purchased, when a Current Contract is surrendered, when retirement payments begin, or upon payment of a death benefit.

20. Prior to the maturity date, all or any part of the Current Contract value may be reallocated among the underlying funds without fee, penalty or charge. Applicants state that there currently are no restrictions on the frequency of transfers, but Travelers reserves the right to limit transfers to one in any six-month period.

#### Applicant's Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan

certificates unless the proceeds of all payments, other than sales load, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the 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.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Account or Other Account that issue the Contracts. Applicants also request that such relief extend to any Future Underwriter.

4. Applicants submit that the request for future relief is consistent with the standards set forth in Section 6(c) of the 1940 Act. Such future relief will promote competitiveness in the variable annuity market by eliminating the need for Travelers to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in repeatedly having to seek exemptive relief would impair Travelers' ability effectively to take advantage of business opportunities as these opportunities arise. If Travelers were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Rather, Applicants asserts, investors may be disadvantaged as a result of Travelers' increased overhead expenses.

5. Applicants represent that even the maximum level of the mortality and expense risk charge under the Contracts is reasonable in relation to the risks assumed by Travelers under the Contracts and is within the range of industry practice for comparable variable annuity contracts. Applicants state that Travelers has reviewed publicly-available information about other annuity products, taking into consideration such factors as: estimated costs, now and in the future; guaranteed

minimum death benefits; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability of the Contract for use in connection with qualified and nonqualified plans. Applicants state that Travelers will maintain at its principal office, and make available on request of the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology used in, and the results of, its comparative review.

6. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of the profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the cost relating to distribution of the Contracts.

7. Notwithstanding the foregoing, Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements used in connection with the Contracts will benefit the Account, Other Accounts, and owners of the Contracts. The basis for such conclusion is set forth in a memorandum that will be maintained by Travelers at its principal office and will be available to the Commission or its staff upon request.

8. Travelers represents that the Account and Other Accounts will invest only in underlying mutual funds which, in the event they should adopt any plan pursuant to Rule 12b-1 under the 1940 Act to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not "interested person" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

#### Conclusion

Applicants submit that, for the reasons stated in the application, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

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

Margaret H. McFarland,  
Deputy Secretary.

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**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Telemarketing Rules**

August 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 30, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The MSRB is filing herewith a proposed rule change relating to telemarketing rules. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

**Rule G-39, Telemarketing**

*No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall:*

*(a) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or*

*(b) make an outbound telephone call to any person for the purpose of soliciting the purchase of municipal securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:*

*(i) the identity of the caller and the firm;*

*(ii) the telephone number or address at which the caller may be contacted; and*

*(iii) that the purpose of the call is to solicit the purchase of municipal securities or related services.*

*(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a broker, dealer, or municipal securities dealer, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the broker, dealer or municipal securities dealer under the control of or assigned to such associated person:*

*(i) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the control of or assigned to, such associated person;*

*(ii) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months, or*

*(iii) to a broker, dealer or municipal securities dealer.*

*For the purposes of paragraph (c), the term "existing customer" means a customer for who the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealer, carries an account.*

**Rule G-21, Advertising**

(a) Definition of "Advertisement." For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or designed for use in the public, including electronic, media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the forgoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by [municipal securities] brokers, dealers or municipal securities dealers.

(b)-(e) No change.

**Rule G-8, Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers**

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)-(xviii) No change.

(xix) Telemarketing Requirements.

(A) Each broker, dealer and municipal securities dealer shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such broker, dealer or municipal securities dealer or its associated persons.

(B) No broker, dealer or municipal securities dealer or person associated with such broker, dealer or municipal securities dealer shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(b)-(e) No change.

(f) Compliance with Rule 17a-3.

Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); paragraph (a)(xi); paragraph (a)(xii); paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); [and] paragraph (a)(xviii); and paragraph (a)(xix) shall in any event be maintained.

**Rule G-9, Preservation of Records**

(a) No change.

(b) Records to be Preserved for Three Years. Every [municipal securities] broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i)-(ix) No change.

(x) all records of deliveries of rule G-32 disclosures required to be retained as described in rule G-8(a)(xiii); [and]

(xi) the records to be maintained pursuant to rule G-8(a)(xv);

(xii) the authorization required by rule G-8(a)(xix)(B); and

<sup>1</sup> 15 U.S.C. § 78s(b)(1).