

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contract are precluded from relying on rule 11a-2 because, in computing the withdrawal charge on amounts surrendered or withdrawn from a UA contract and deposited into the TRA contract, Travelers Insurance/Travelers Life will not give credit for the period during which the owner held the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.⁷ 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."⁸ 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.

⁷ 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.

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