dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 and section 22(c) should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order that applies to the Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the application. Applicants submit that having Applicants file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive requests meet the standards set out in section 6(c) of the 1940 Act and that the Commission should, therefore, grant the requested order.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31897 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24787: File No. 812–11940]

The Travelers Insurance Company, et al.

December 8, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'')

ACTION: Notice of Application for an Order under section 6(c) of the Investment Company Act of 1940 (''1940 Act'' or ''Act'') granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits added to purchase payments of certain variable annuity contracts.

Applicants: The Travelers Insurance Company (''The Travelers''), The Travelers Life and Annuity Company (''Travelers Life,'' together with The Travelers, ''Insurers''), the Travelers Fund BD III for Variable Annuities (''Fund BD III''), The Travelers Fund BD IV for Variable Annuities (''Fund BD IV'') (Fund BD III, together with Fund BD IV, the ''Separate Accounts'' or ''Accounts'') and Travelers Distribution LLC (''Travelers Distribution'').

Summary of Application: Applicants seek an order section 6(c) of the Act to the extent necessary to permit the recapture of credits added to purchase payments of certain variable annuity contracts (the ''Contracts''). Applicants also request that the order being sought extend to (i) any other contracts that may be issued in the future by the Insurers that are substantially similar in all material respects to the Contracts (''Future Contracts'') but are issued through the Accounts or through separate accounts of the Insurers to be established in the future (''Future Accounts''), and (ii) any other National Association of Securities Dealers, Inc. (''NASD''), member broker-dealers controlling or controlled by, or under common control with the Insurers, whether existing or created in the future, that acts as a distributor of and/or principal underwriter for the Contracts or Future Contracts offered through the Insurer's Accounts or Future Accounts (''Future Underwriters'').

Filing Date: The application was filed on January 19, 2000, and was amended and restated on November 1, 2000. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

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 January 2, 2001, 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: Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, 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).

Applicant's Representations

1. The Travelers, a Connecticut stock insurance company, is licensed to conduct life insurance business in all of the states of the United States, the District of Columbia, Puerto Rico, Guam, the British and U.S. Virgin Islands, and the Bahamas. The Travelers is an indirect wholly owned subsidiary of Citigroup Inc. Citigroup Inc. consists of businesses that include a broad range of financial services, including asset management, banking and consumer finance, credit and charge cards, insurance investments, investment banking, and trading.

2. Travelers Life, a Connecticut stock insurance company, is licensed to conduct life insurance because in a majority of states of the United States. Travelers Life is a wholly owned subsidiary of The Travelers.

3. Fund BD III and Fund BD IV were established under the laws of Connecticut as separate investment accounts by The Travelers and Travelers Life, respectively. Assets allocated to each Separate Account support the benefits payable under group and individual annuity contracts offered by the Insurers. Each Separate Account is

registered with the Commission as a unit investment trust, and meets the definition of a ''separate account'' in section 2(a)(37) of the 1940 Act.

4. 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 Contracts, and is affiliated with the Insurers.

5. The Contracts are flexible premium variable annuity contracts that may be purchased by individuals or groups in connection with certain retirement plans on a tax-qualified or a non-tax-qualified basis. Each Contract permits an owner to allocate funds to one or more variable funding options and/or to the fixed account. Each Contract provides an owner special features such as purchase payment credits, systematic withdrawals, dollar-cost averaging, and automatic rebalancing as well as a choice of a standard death benefit or an enhanced death benefit.

6. During the first Contract year, for each purchase payment made, the relevant Insurer will add a credit to the owner's Contract value. This credit will be funded from the Insurer's general account assets. The credit will equal a percentage of each purchase payment made and will depend upon the greater age of the owner or annuitant at issue. If the greater age is 69 or under, the credit will be 5%. If the greater age is 70 or over, the credit will be 4%.

7. Each Insurer will apply the credit to the investment options selected by the owner in the same ratio as the applicable purchase payment. However, the Insurer will deduct the credit from the contract value if: (i) The owner returns the Contract during the right to return period; (ii) the owner (or the annuitant, with no contingent annuitant surviving) dies within 12 months after the credit is applied; or (iii) the owner surrenders or annuitizes the Contract within 12 months after the credit is applied. The amount of credit deducted from any surrender, any contract value applied to an annuity option, or death benefit made by the Insurer will not include the amount attributable to the credit's investment pains or losses. An Insurer will not recapture purchase payment credits from any partial withdrawal.

8. Each owner may elect a standard death benefit or an enhanced death benefit. Under the standard death benefit, an Insurer will pay the beneficiary an amount equal to the greater of (1) and (2) below, each reduced by the any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; or (2) is the total purchase payments made under the Contract.

9. Under the enhanced death benefit, an Insurer will pay the beneficiary an amount equal to the greatest of (1), (2), and (3) below, each reduced by any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; (2) is the total purchase payments made under the Contract; or (3) is the ''step-up'' value that reflects the highest anniversary calculation of cash value (before the annuitant's 80th birthday or death) after adjustment for purchase payments and withdrawals.

10. An owner may make a withdrawal at any time before the maturity date. However, each Insurer will apply a withdrawal charge if purchase payments and associated credits are withdrawn before they have been in a contract for ten years. The withdrawal charge is assessed as a percentage of each purchase payment and associated credit as follows: 0–4, 5, 6, 7, 8, 9, 10 years since purchase payment made will be assessed a withdrawal charge of 8%, 7%, 6%, 5%, 3%, 1%, and 0%, respectively.

11. For purposes of the withdrawal charge calculation, the Insurers will take the withdrawal first from: (a) any purchase payments and associated credits to which no withdrawal charge applies; then from (b) any remaining free withdrawal allowance (after being reduced by (a)); then from (c) any purchase payment and associated credits to which a withdrawal charge applies (on a first-in, first-out basis); and then from (d) any Contract earnings.

12. Purchase payment credits, however, are not considered in the calculation of the withdrawal charge if the withdrawal is taken within 12 months after the credit is applied—therefore, purchase payment credits are never subject to withdrawal charges during that 12-month period. Unless the owner requests otherwise, each Insurer will deduct the withdrawal charge from the amount withdrawn.

13. The Insurers will not deduct a withdrawal charge if purchase payments are distributed: due to the death of the owner or the annuitant (with no contingent annuity surviving); under the Travelers Minimum distribution Program (under which an owner may instruct an Insurer to make minimum distributions that may be required by the IRS upon reaching age 70½); or under the Nursing Home Confinement provision (this provision is only available if the owner elects the enhanced death benefit).

14. Beginning in the second Contract year, an owner may withdraw up to 10% of contract value annually without a withdrawal charge. The free withdrawal amount is calculated as of the end of the previous Contract year.

15. Certain other charges are made in connection with the Contracts. Among these charges are an annual $40 administrative charge (waived if contract value is $100,000 or more), asset-based mortality and expense risk and administrative expense charges, and fund fees and expenses.

16. The mortality and expense risk and administrative expense charges are deducted daily. On an annual basis, the mortality and expense risk and administrative expense charges combined, total 1.40% of the average daily net assets of the Separate Account (if the owner selects the standard death benefit) or total 1.60% of the average daily net assets of the Separate Account (if the owner selects the enhanced death benefit).

Applicants' Legal Analysis

1. 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 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. Because the provisions described below may be inconsistent with certain aspects of the recapture of the purchase payment credits, Applicants seek exemptions from Sections 2(a)(32), 22(c), 27(i)(2)(A) and Rule 22c–1 thereunder, to the extent necessary, pursuant to Section 6(c) to recapture the credits from those owners who surrender during the right to return period, or who surrender, annuitize or die before the expiration of the relevant 12-month time period. For the reasons discussed below, Applicants submit that the recapture of the purchase payment credits is in the public interest and consistent with the protection of investors and purposes fairly intended by the 1940 Act.

2. Applicants note that because the credit is added to contract value, the asset-based mortality and expense charge and administrative charge are higher than they would have been had the Insurer not added the credit to the owner's Contract value. Applicants submit that it is not administratively

feasible to track the credit amount in the Separate Account once the credit is applied. Nevertheless, each Insurer represents that the fees and charges, in the aggregate, are reasonable within the meaning of Section 26(e).

3. Section 27(i)(2)(A) of the 1940 Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines a ''redeemable security'' as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. To the extent the recapture of the purchase payment credits could be seen as a discount from net asset value or could result in the return of less than the proportionate share of the issuer's net assets, the recapture of the credits would trigger the need for relief absent some exemption from the 1940 Act.

4. The purchase payment credits are part of the overall pricing structure for each Contract. When the Contracts were designed, the pricing actuaries established the credits at a set level assuming the Insurer could recover its costs associated with the credits if the owner remained in the Contract for a certain period of time. Applicants submit that should the owner surrender, annuitize, or die before that period, the Insurer must recover the credits to help offset its costs. Therefore, Applicants seek relief from Section 2(a)(32).

5. Applicants assert that the owner's interest in the credit amount does not vest until the expiration of both the right to return period and the 12-month period following the credits' application to the owner's account. Until such time, the Insurer retains the right to and interest in the credit amount, although not the earnings attributable to the credit. Therefore, Applicants argue that when an Insurer recaptures the purchase payment credit, the Insurer is simply taking back what rightfully belongs to the Insurer—its own assets. Accordingly, Applicants argue that the credit recapture is a legitimate ''charge'' for a benefit under the Contracts, and does not reduce the amount of Fund BD III's or Fund BD IV's current net assets that an owner otherwise would be entitled to receive.

6. Moreover, Applicants represent that the recapture of the purchase payment credits is consistent with the long-term nature of the Contracts. The recapture acts as an ''anti-selection'' device by discouraging an owner to invest in the Contract simply to make a quick profit. In other words, the recapture prevents an owner from making a very large contribution one day and then surrendering the contract the next day (and thereby depriving the Insurer of opportunity to recover the cost of the credits applied). As stated above, the credits are contributed by the Insurer from its own general account assets, and any gain attributable to the credits would remain as part of the owner's contract value.

7. Consistent with Section 2(a)(32), therefore, Applicants argue that the Contracts will be ''redeemable securities.'' The Contracts provide for withdrawals and surrenders of contract value. The prospectuses for the Contracts disclose the contingent nature of the credit recapture. Accordingly, Applicants argue that there will be no restriction on, or impediment to, withdrawals or surrenders that should cause the Contracts to be considered other than redeemable securities within the meaning of the 1940 Act and rules thereunder, and that an owner upon taking a withdrawal from a Contract or surrendering or annuitizing a Contract will receive his ''proportionate share'' of the relevant Separate Account: *i.e.,* the amount of the purchase payment reduced by the amount of all charges and increased or decreased by the amount of investment performance credited to the Contract.

8. Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, imposes requirements with respect to both the amount payable on redemption and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing a redeemable security and its principal underwriter from selling, redeeming, or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security. To the extent that the credit recapture can be viewed as causing a Contract to be redeemed at a price that is computed at less than current net asset value, Applicants request relief from Section 22(c) and Rule 22c–1.

9. Applicants argue that the purchase payment credit recapture will comply with the requirements of Rule 22c–1. Regarding the amount payable, Applicants argue that the recapture of the credits upon surrender, annuitization, or death of an owner during the right to return period and the 12-month period following the credits' application to the owner's Contract value, does not alter the owner's current net asset value. Furthermore, regarding the timing requirement of Rule 22c–1, Applicants, consistent with their current procedures, represent that they will determine the net cash surrender value under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an owner's request for surrender or annuitization or a beneficiary's death report date. Accordingly, Applicants assert that they will comply with both the amount payable and timing requirements of Rule 22c–1.

10. In addition, Applicants argue that the credit recapture is consistent with the policy behind Rule 22c–1. Applicants state that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders, and (ii) speculative trading practices that are unfair to such holders. Applicants represent that the purchase payment credit recapture would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit, because a surrendering or annuitizing owner, or a beneficiary, would ''receive'' no more than an amount equal to the Contract value determined pursuant to the formula and at a time set out in the Contract. Furthermore, Applicants argue that variable annuities, by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the credit recapture would discourage, rather than encourage, any such trading.

11. In addition to the considerations discussed above, Applicants assert that despite the fact that the purchase credits are subject to recapture upon surrender, annuitization, or payment of the death benefit before the expiration of the relevant 12 month time period, the credits are advantageous to owners. Even though the credits do not vest until 12 months after they are applied, owners receive the benefits from the credits. Upon application, owners will be able to invest the credits (thus having more to invest than they otherwise would have had), and will be able to receive any positive investment experience from those credits.

12. Applicants assert that the Contracts' charge structure provides equitable treatment to all owners. Applicants state that the charge structure was established for the purchase payment credits so that the Insurer may recover its costs over the life of the Contract. If an owner could surrender or annuitize a Contract, or if a beneficiary could receive the death benefit proceeds before the 12 month

period after credit application without the recapture of the credits, the Insurer may not be able to fully recover its costs. If the Insurer did not recapture the credits and instead raised other charges under the Contract, the Insurer could be charging persisting owners enrolled in the product more than may otherwise be necessary to recover the costs attributable to such owners.

13. Applicants seek the relief requested herein not only with respect to themselves and the Contracts described above, but also with respect to Future Contracts issued by themselves through Future Accounts and underwritten by Future Underwriters. Applicants represent that the terms of the relief requested with respect to any Future Contract, Future Account, and Future Underwriter are consistent with standards set forth in section 6(c) of the 1940 Act.

14. Applicants state that, without the requested class relief, exemptive relief for any Future Contract, Future Account, and Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants argue, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise. Applicants assert, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Contract and provisions of the 1940 Act, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of section 6(c), 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. 00–31896 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43685; File No. SR–BSE–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Amended by the Boston Stock Exchange, Inc., Relating to an Amendment to the Post Primary Session (''PPS'')

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 6, 2000, the BSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange seeks to amend existing rules under Chapter IIB, *Post 4:00 P.M. Trading,* which will allow member firms to accommodate various customer average pricing programs based on the primary market's primary trading session and to permit risk based portfolio programs which are based on the primary market's closing price.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Boese, Assistant Vice President, BSE, to Alton Harvey, Office Chief, Office of Market Watch, Division of Market Regulation, Commission, dated December 1, 2000 (''Amendment No. 1''). In Amendment No. 1, the BSE made corrections to its rule text and clarified issues regarding the language used in its filing.

The proposed rule language is as follows: The new language is in *italics.*

CHAPTER IIB

Facilitation of GTX Orders

Application of Chapter

Sec. 1. This chapter applies to the facilitation of certain orders after the close of the 9:30 a.m. to 4:00 p.m. trading session. All other provisions of the Constitution and Rules of the Exchange are applicable unless superseded by this chapter.

Facilitation of Customer Average Pricing Programs ''CP''s Eligible for Reporting During PPS

Sec. 4. This section applies to the facilitation of certain transactions hereinafter referred to as Customer Average Pricing Programs, ''CP''s, which are reported during the PPS to facilitate transactions in single issue, or portfolios of stocks. In order to be eligible under this rule, all CPs must facilitate customer-to-customer (agency), or customer-to-principal (principal) average pricing programs that are based on primary market average prices. For the purposes of this Section and Section 5, only those stocks that are listed on the Exchange, or that are traded pursuant to Unlisted Trading Privileges (UTP), shall be eligible for these programs.

(a) CPs are not exposed to the Exchange's PPS auction, are not price protected during PPS, and thus, may not be broken-up upon entry to the Exchange [1]

(b) CPs must be electronically communicated to the Exchange via BEACON, identified as ''CP'' on each cross, entered by symbol and price, into the system, identified as to ''principal'' or ''agency'', and when applicable, identified as ''short exempt''. The time slice must be identified on the cross, identifying the beginning and ending slice for CP entered crosses.

BEACON will record the transaction for Tape reporting with the identifier ''W'', to the nearest fraction or decimal eligible for reporting by the Exchange.

(c) The following CP crossed orders are eligible for Reporting during the PPS:

(i) Primary Market Average Price—Benchmark +/− (Plus or Minus)

This CP Program provides customers with average pricing based on the primary market's trading session transactions that are reported to the consolidated tape. The Benchmark is the primary market's average price for the duration of the CP Program. If the Benchmark is exceeded, the customer will receive a better price. If the