UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Act ICA of 1940
Section 26(a)
Rule
Public
Availability 9/3/93

September 3, 1993

Lawrence J. Latto, Esq.
Shea & Gardner
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036

RE: The Travelers Insurance Company et al.

Dear Mr. Latto:

Enclosed is our response to your letters of May 27, 1993 and July 27, 1993. By incorporating our answer into the enclosed photocopies of your letters, we avoid having to recite or summarize the facts involved.

In any future correspondence on this matter, please refer to our Reference No. IP-7-93.

Sincerely,

Clifford E. Kirsch

Clifford E. Kirsch
Assistant Director
Office of Insurance Products

PUBLIC

SEP 0 3 1993

RESPONSE OF THE OFFICE OF
INSURANCE PRODUCTS
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. IP-7-93
Travelers Insurance Company et al.

Your letters of July 27, 1993 and May 27, 1993, request our assurance that we would not recommend enforcement action to the Commission if The Travelers Insurance Company ("Travelers") and The Travelers Fund U for Variable Annuities ("Fund U") collect the fees for the CHART investment advisory program (the "Program") of Copeland Financial Services, Inc. ("CFS") in the manner described in your letters. In your opinion, CFS' fee collection arrangement for the Program is not prohibited by Section 26(a)(2) of the Investment Company Act, and Commission approval of the arrangement is not required by Section 17(d) of that Act or Rule 17d-1 thereunder.

As explained in your letters, Travelers serves as the depositor of Fund U, a separate account that is registered with the Commission as a unit investment trust and which issues variable annuity contracts. CFS is part of a group of companies known as the "Copeland Group," which includes a broker-dealer that sells variable annuity contracts issued by Travelers as well as contracts issued by unaffiliated insurance companies. Because Travelers and CFS are both subsidiaries of The Travelers Corporation, you state that CFS is an "affiliated person" of Fund U under the Investment Company Act.

Your letters indicate that under the Program, CFS will advise each participant as to allocating his or her assets among a family of mutual funds or within a variable annuity contract that offers several investment options. CFS formulates its recommendations by analyzing the investor's risk tolerance, investment needs and objectives, and other pertinent attributes. You state further that as an investment adviser registered under the Investment Advisers Act of 1940, CFS will provide investors with the disclosure required by that Act.

Initially, the Program will be offered only to owners of the Fund U "Universal Annuity" contract who wish to allocate their assets among the six series of American Odyssey Funds, Inc., a mutual fund managed by a subsidiary of CFS called American Odyssey Funds Management, Inc. Currently, there are 25 investment options under the Universal Annuity, although only the six series of American Odyssey Funds, Inc. will participate initially in the Program. Your letters note that the Program is not limited to investment products offered by Travelers and its affiliates, and could be used with any family of open-end management investment companies, series investment company, or variable insurance product that allows for asset transfers and offers investment options that are acceptable to CFS and suitable for the Program. However,

consistent with your request, the assurance that we provide in this response applies only to the Program as operated currently with Fund U.

To participate in the Program, an investor must sign an investment advisory contract with CFS, which authorizes CFS to submit the asset allocation instructions to be followed by Fund U. You state further that the Program is optional: that is, an investor may purchase the Universal Annuity without contracting with CFS for asset allocation advice. Moreover, CFS will not allocate an investor's funds without prior authorization (apart from periodic rebalancings designed to bring the investor's holdings into closer conformity with the original agreed-upon allocation).

Your letters state further that for providing asset allocation services, CFS will be paid an asset-based fee each quarter. The agreement between CFS and the investor pursuant to which CFS provides asset allocation services will authorize Fund U to redeem the number of units needed to pay that quarterly fee, and also will authorize payment directly to CFS. These redemptions will be confirmed and reflected in quarterly statements that are delivered to each investor (or to each participant, in the case of a group variable insurance contract). At any time, an investor may cease participating in the Program and thereby terminate the automatic quarterly redemptions. Finally, your letters state that Travelers will receive no part of the quarterly fee.

Section 26(a) of the 1940 Act in effect prohibits the trustee or custodian of a unit investment trust from deducting any fee from the trust's assets other than fees for bookkeeping and other administrative services. The section is intended to prevent the trustee and custodian from reaping "hidden profits" through various deductions from trust assets or income.[1] Your letters argue that the Program fees should not be regarded as an expense of Fund U governed by Section 26(a), because such fees are not charged uniformly and proportionately to all the investors in Fund U. Rather, the Program fees are paid only by those Fund U investors who have opted to receive asset allocation advice from CFS. Further, you state that the amounts redeemed do not compensate CFS for expenses incurred in operating Fund U. Rather, the fee pays CFS for the asset allocation services of the Program, which is

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[1] See Protecting Investors: A Half Century of Investment Company Regulation, Report of the Division of Investment Management, at 382-83 (1992).

separate from and independent of Fund U. You state that CFS is in no way responsible for operating Fund U. In sum, your letters contend that the Program fee is an expense of the investor, rather than an expense of Fund U.

Section 17(d) of the 1940 Act prohibits affiliated persons of a registered investment company and certain others from engaging in joint transactions with the company in contravention of Commission rules. Rule 17d-1 under the 1940 Act prohibits any joint enterprise, joint arrangement, or profit-sharing plan involving an investment company and such affiliated persons absent an exemptive order of the Commission. Although Fund U and its affiliate, CFS, participate in the Program, your letters assert that no arrangement violative of Section 17(d) and Rule 17d-1 is present. Moreover, you argue that because Fund U's only involvement in the Program is to process participating investors' quarterly redemption requests, Fund U cannot be disadvantaged in any way.

Based on the representations and conditions set out in your letters, but without necessarily agreeing with your legal arguments, we would not recommend enforcement action to the Commission if Travelers and Fund U collect the fees for the CHART investment advisory program of CFS in the manner described in your letters. Our position is subject to the following disclosure conditions:

(1) Consistent with Rule 204-3 of the Investment Advisers Act of 1940, CFS will provide its "brochure" to each advisory client and prospective advisory client;

(2) the portion of Fund U's prospectus that responds to item 3(a) of Form N-4 will contain a separate fee table that illustrates the total fees to be paid by investors who participate in the Program; and

(3) to the extent set out in your letters, any advertisement of the performance of the subaccounts of Fund U that invest in the American Odyssey Funds, Inc. will reflect the effect of Program fees.

In assuring you that we would not recommend enforcement action to the Commission, we are not implying that any fee deducted by cancelling units attributable to an investor's participation in a unit investment trust would be outside the ambit of Section 26. In our opinion, a mandatory fee deducted in this manner from every investor's account is a deduction from trust assets for purposes

of Section 26, even though the value of each unit remains the same. Accordingly, we would consider such a fee to be indistinguishable from an asset-based charge in applying the provisions of Section 26.

Because our position is based on the facts and representations in your letters, you should note that different facts or representations may require a different conclusion. Further, this response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the issues presented.

Christopher Sprague

C. Christopher Sprague
Senior Counsel

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*NOT ADMITTED IN D.C.

July 27, 1993

Inv. Co. Act of 1940
§ 17(d); Rule 17d-1; § 26(a)(2)

HAND DELIVERED

Clifford E. Kirsch, Esq.
Assistant Director
Office of Insurance Products
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The Travelers Insurance Company;
The Travelers Fund U for Variable Annuities; and
Copeland Financial Services, Inc.

Dear Mr. Kirsch:

This is to supplement our letter of May 27, 1993 in which we asked to be advised that the staff would not recommend that the Commission take enforcement action if The Travelers Insurance Company ("The Travelers"), acting as depositor of the Travelers Fund U for Variable Annuities ("Fund U"), collected certain fees owed to Copeland Financial Services, Inc. ("CFS") by clients participating in its "CHART" Investment Advisory Program (the "Program") in the manner described in that letter.

1. This will confirm that CFS is registered as an investment adviser under the Investment Advisors Act of 1940.

2. The CHART Program is described at pages 2 and 3 of our May 27, 1993 letter. This is to expand upon that description. As is there explained, when a new client enters into an investment advisory agreement under the Program, an analysis is made of the characteristics of that client and a recommendation is given by CFS concerning what percentages of the assets held in the client's Universal Annuity variable annuity contract that are invested in the several Funds in American Odyssey Funds, Inc. should be allocated among the Funds. For example, the recommendation might be that 20% be invested in the Core Equity Fund, 30% in the Emerging Opportunities Fund, 30% in the International Equity Fund, and 20% in the Long-Term Bond Fund. If the client approves, CFS will exercise its authority under its investment advisory agreement and will direct Travelers to allocate the Client's assets accordingly. As the values in each Fund vary with time, CFS, without consultation with the client, will rebalance these amounts so as to bring them into closer conformity with the original agreed-upon allocation. The original allocation, however, will not be changed without the client's consent. Periodically, the allocations will be reviewed with the client; and if CFS believes that a change in the allocation percentages is desirable, it will make such a recommendation to the client and, once again, if the client approves, the revised allocation will be carried out.

3. There is a brief discussion on pages 3 and 4 of our May 27, 1993 letter about how the fees under the CHART Program are determined. The computation of the fee and how it will be collected is set forth in the CHART Program brochure which, to this extent and others, is incorporated into the Investment Advisory Agreement entered into by the client. The fees are determined as a percentage of the amount to which the Program applies on the last business day of each three-month period ending at the close of January, April, July and October. The fees are charged on a prospective basis for the following three-month period so that no charge is made for the period between the date that participation in the Program first begins and the following valuation (or fee determination) date. However, if a participant should withdraw from the Program, for example, two months after a valuation date, there would be no refund of the fee based on that valuation date. The first valuation date under the Program will be July 30th, the last business day of July.

Two sentences on page 4 of our letter of May 27, 1993 may possibly be ambiguous because they are redundant. We state that the quarterly redemption requests provided for under the Program will be revocable at any time by the participant, and also will be revoked automatically if he or she withdraws from the Program. This may imply that a participant who wishes to pay the fee in some other manner may remain in the Program, revoke the redemption request and then, for example, pay the fee in cash. At present, at least, this option is not available to participants. Every participant who embarks upon the Program must agree that the fee will be collected through the quarterly redemption requests described in our May 27, 1993 letter.

4. This will confirm that CFS will comply with Rule 204-3 under the Investment Advisors Act and will give a written disclosure statement describing the Program to every participant.

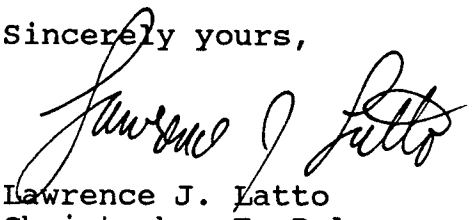
5. This will confirm that the pages of the prospectus for The Travelers Universal Annuity that contains the information required by Item 3 of Form N-4 will contain a separate table that shows the fees to be paid by those persons who select American Odyssey Funds, Inc. and who participate in the Program. Thus, there will be two separate examples in the fee tables respecting the American Odyssey Funds, Inc., one showing the total charges and expenses for persons who do not participate in the Program and the other showing the charges and expenses that include the fee charged under the Program.

6. Similarly, this will confirm that if there is any general advertising respecting investment performance of the sub-account of Fund U that is invested in the American Odyssey Funds, Inc., the performance will be calculated, if only one investment return is displayed, so as to include the fee charged under the CHART Program. There may be an appropriate footnote indicating that the returns would be higher if there were no participation in the CHART Program. There may be instances where performance advertising will be directed to and received by only contract owners who are not participants in the Program. For example, there may be a class made up of employees of a single employer which has not made the Program available under its retirement plan. Performance advertising limited to such a class will provide only the performance data that applies to them. Alternatively, any advertising of performance involving the sub-account of Fund U that is invested in the American Odyssey Funds, Inc., in advertising that is not so limited, will show two sets of returns, one

assuming participation in the CHART Program and the other assuming that there is no participation in the Program.

We are hopeful that we will have a response to our letter in the near future; and if we can be of assistance in any way, we would appreciate it if we could be promptly advised.

Sincerely yours,



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*NOT ADMITTED IN D.C.

May 27, 1993

Inv. Co. Act of 1940
§ 17(d); Rule 17d-1; § 26(a)(2)

HAND DELIVERED

Clifford E. Kirsch, Esq.
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Re: The Travelers Insurance Company;
The Travelers Fund U for Variable Annuities; and
Copeland Financial Services, Inc.

Dear Mr. Kirsch:

We request the staff's advice that it will not recommend that the Commission take enforcement action if The Travelers Insurance Company ("The Travelers") acting as the depositor of The Travelers Fund U for Variable Annuities ("Fund U") and Fund U collect the fees for the CHART investment advisory program (the "CHART Program" or the "Program") of Copeland Financial Services, Inc. ("CFS"), a registered investment adviser, in the manner described below.

A. The CHART Program

CFS is the sponsor of the CHART Program, a non-discretionary investment allocation advisory service. CFS recommends to participants in the Program how to allocate their assets held in a family of mutual funds or in a variable contract which provides for several investment options. The allocations are based upon an analysis of the characteristics of the individual participant, including his or her risk tolerance and investment needs and objectives. Participants in the CHART Program sign an investment advisory contract with CFS, giving it the authority to submit transfer instructions to the mutual funds or insurance company to carry out the asset allocation advice.

The CHART Program can be used with any family of open-end investment companies (or any series investment company) which provides for transfer privileges, so long as it includes several funds with investment objectives acceptable to CFS and suitable for the Program. The Program also can be used with a variable annuity or variable life insurance contract, again so long as it provides investment options acceptable to CFS and suitable for the Program.

CFS intends, at the outset, to offer the CHART Program to persons who are now contract owners, or who intend to become contract owners, of a variable annuity contract issued by The Travelers called the "Universal Annuity." CFS has decided to introduce the Program in connection the Universal Annuity because a broker-dealer affiliated with CFS, Copeland Equities, Inc., has offered that contract successfully in the past, primarily in connection with the funding of retirement plans that enjoy tax advantages under §§ 403(b) and 457 of the Internal Revenue Code.

CFS is a wholly-owned indirect subsidiary of The Travelers Corporation, which is also the parent of The Travelers. More significantly, CFS is one of a group of subsidiaries of The Travelers Corporation that includes The Copeland Companies and subsidiaries of The Copeland Companies (collectively the "Copeland Group"). This group has always been operated largely autonomously and independently of the other subsidiaries of The Travelers Corporation, and independently of The Travelers. For example, the broker-dealer in the Copeland Group, Copeland Equities, Inc., offers variable annuity contracts issued by many other insurance companies not affiliated with The Travelers Corporation, and

approximately 60% of its business is with the products of issuers unrelated to The Travelers.

At least initially, CFS will offer the CHART Program in connection with only six of the 25 investment options available under the Universal Annuity, namely the six investment funds that are all part of a newly established series investment company, American Odyssey Funds, Inc., which is managed by American Odyssey Funds Management, Inc., a subsidiary of CFS. The American Odyssey Funds are available to Universal Annuity contract owners through The Travelers Fund U for Variable Annuities ("Fund U"), a separate account of The Travelers which is registered as a unit investment trust.[1/] That separate account purchases and holds shares of other open-end investment companies as well as shares of American Odyssey Funds, Inc.

The CHART Program is not an integral element of the Universal Annuity or the American Odyssey Funds. A purchaser of a Universal Annuity is not required to join the Program, and he or she may allocate amounts to the American Odyssey Funds without joining the Program. Only if he or she decides to become a participant in the CHART Program, and if the recommendations to that person made by CFS under the Program are acceptable, will transfer instructions be given to The Travelers by CFS, pursuant to the authority given to it under the investment advisory agreement.

CFS anticipates that the CHART Program will be offered in the future in connection with investment options that are unrelated to any other subsidiary of The Travelers Corporation and is already in active discussion with several unaffiliated issuers for this purpose.

B. Collection of the CHART Program Fee

At the same time that the participant joins the CHART Program, by executing the investment advisory agreement with

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1/ Although American Odyssey Funds, Inc. is currently selling its shares only to Fund U (with the exception of seed money shares), it plans to offer and sell its shares to issuers of variable annuity contracts and to qualified retirement plans that are independent of The Travelers Corporation.

CFS, he or she will authorize directing the issuer of the investment contract that is utilized in his or her program (in the initial use of the Program, this will be The Travelers as the issuer of the Universal Annuity) to redeem a sufficient number of shares, units or dollars to pay the quarterly fee payable under the Program and to pay that amount directly to CFS. These redemptions will be confirmed and reflected in the quarterly statements received by each contract owner (in the case of group contracts, each participant). The continuing redemption request will, of course, be revocable at any time by the contract owner or participant and it will also be revoked automatically if he or she withdraws from the CHART Program. The CHART investment advisory agreement with CFS is also terminable by the participant at any time.

CFS will provide to persons it solicits to participate in the Program a disclosure statement explaining the Program, its fees and the manner in which those fees will be collected.

C. The Proposed Fee Collection Is Not Prohibited By § 26(a)(2)

Section 26(a)(2) of the Investment Company Act of 1940 (the "1940 Act") provides generally that the trustee or custodian of a unit investment trust may charge against the trust's assets fees for its services and reimbursement for its expenses. There is, however, an important limitation in § 26(a)(2)(C):

> "no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); * * *."

In other words, any fee paid by a unit investment trust to its depositor or principal underwriter (of an affiliate of either) to cover the unit investment trust's expenses must be for bookkeeping or other administrative services and meet the Commission's reasonableness standard, which is set forth in

Rule 26a-1.[2/] The Division's recent 1940 Act study report explains the purpose behind these provisions:

> "The periodic payment plan, because it is nothing more than a means of purchasing securities by installment, requires a plan trustee or sponsor to perform relatively simple administrative tasks. Therefore, the often illusory services for which sponsors were paid out of trust assets before 1940 necessitated the restrictions of section 26(a)(2)(C) and the at cost limits of rule 26a-1." Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation 391 (May 1992) ("1940 Act Study Report").[3/]

The Travelers, as well as many other life insurance companies that issue variable contracts, has taken the position that the deduction of amounts from a registered separate account such as Fund U in return for assuming risks

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2/ The staff, in a 1979 no-action letter, made clear that § 26(a)(2)(C) is concerned with payment of the trust's expenses for administrative services, rather than all payments or withdrawals from the trust. "This Division has consistently interpreted Section 26(a)(2)(C) of the Act to require that if the trustee delegates to the investment company's principal underwriters, depositor, or promoter ('sponsor'), duties the trustee is obligated to perform under the terms of the trust indenture, for the performance of which [the sponsor] receives fees from the investment company or its security holders, the trustee may pay to the sponsor only such amounts as will reimburse the sponsor for the approximate cost actually incurred by the sponsor in performing such delegated duties." E.F. Hutton Tax Exempt Fund, 1979 SEC Noact LEXIS 2690 (Apr. 11, 1979) (emphasis added).

3/ See also E.F. Hutton Tax Exempt Fund, 1979 SEC Noact LEXIS 2690 (Apr. 11, 1979) ("In our view, Section 26(a) of the Investment Company Act of 1940 ('Act') is aimed at preserving the assets of registered investment companies and preventing security holders thereof from being subjected to purported 'custodian' charges which, instead of compensating the custodian for custodianship services actually rendered, in fact, provide additional remuneration to the promoters.").

involving life contingencies or rendering services generally provided by life insurance companies do not violate § 26(a)(2). Nevertheless, the Commission staff has taken the different position that such deductions may lawfully be made only if an exemptive order pursuant to § 6(c) has been issued. Life insurance companies generally, including The Travelers, have acceded to this view and have sought and obtained exemptions from § 26(a)(2) whenever such charges or deductions are made from the accounts or cash values of owners of variable contracts pursuant to the terms of the variable contract. For purposes of this letter we assume that this is a correct interpretation of § 26(a)(2), and we do not intend to question the accuracy of this interpretation.

In our opinion, the proposed quarterly redemptions from unit investment trusts, such as Fund U, to pay the CHART Program fees do not violate § 26(a)(2). Unlike contract charges applicable to all contract owners which are deducted from a unit investment trust, such as a mortality and expenses risk charge, the quarterly CHART redemptions are not made to pay an expense <u>of the trust</u>. The amounts redeemed do not compensate CFS for expenses incurred in operating the trust; in fact, CFS does not have any responsibilities for operating the trust. Rather, the amounts redeemed pay CFS for asset allocation services of the CHART Program, which is separate from and independent of the trust. The Travelers, as depositor of the trust, gets no part of this fee. It is important also to recognize that participation in the CHART Program is not required to invest in Fund U or the American Odyssey Funds. This fact dispels any notion that the redemptions are simply hidden additional charges for investing in Fund U or the American Odyssey Funds. Rather, the redemptions are made only at the direction of an investor who has determined that he or she wants to purchase and pay for the additional services provided by CFS through the CHART Program.

Although most exemptive orders from § 26(a)(2) involve charges that are determined as a percentage of the value on each day of the net assets of the separate account, we recognize that an issue could arise under § 26(a)(2) when withdrawals are made quarterly through redemption of units. The primary determining factor is that these withdrawals are not "expenses of the trust" within the meaning of § 26(a)(2) because they are not charged uniformly and proportionately against <u>all</u> the participants in the trust. They are rather expenses only of those participants who have chosen voluntarily to employ Copeland's CHART Program.

In short, the CHART Program redemptions are analogous to redemptions pursuant to a systematic withdrawal plan, an arrangement in widespread use in the industry, with the exception that the contract owner has requested the payments be made directly to another person to pay a fee incurred pursuant to a separate investment advisory agreement. Since these redemptions are made to pay fees under a separate, optional program rather than to pay expenses of the trust, they are not prohibited by § 26(a)(2).

D. Commission Approval of the Fee Collection Procedure is Not Required by § 17(d) or Rule 17d-1

Section 17(d) of the 1940 Act, in pertinent part, makes it "unlawful for any affiliated person of or principal underwriter for a registered investment company * * * or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered investment company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant." Thus, § 17(d) is not self-executing and the Commission's authority is limited to the adoption of rules which carry out the specified purpose.

Rule 17d-1, which is plainly within that authority, requires Commission approval before any "affiliated person of or principal underwriter for any registered investment company * * * [or any] affiliated person of such a person or principal underwriter, acting as principal, [may] participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant * * *."

The Rule defines "joint enterprise or other joint arrangement or profit-sharing plan" as "any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter,

have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to Section 15 of the Act."

Although CFS is an affiliated person of Fund U, the system of quarterly redemptions to pay the CHART Program fee does not, in our opinion, constitute a joint transaction subject to § 17(d) or Rule 17d-1. The Travelers as the issuer of the Universal Annuity is obligated by § 22(e) of the 1940 Act to carry out redemption requests, and that is all, in our view, that The Travelers is doing. The Travelers does not participate in any way in the CHART Program and does not receive any part of the CHART fee. It does not make any special charge for carrying out this continuing redemption request. CFS did, of course, discuss this arrangement with its affiliated company, The Travelers, but the only thing The Travelers agreed to do that it was, perhaps, not required to do by law was to carry out the instructions of its contract owners to send the redemption proceeds to CFS rather than to the contract owners for transmission to CFS. Those discussions and that agreement, in our opinion, do not constitute a joint transaction. Although § 17(d) applies to more than formal written joint ventures, at least "some element of 'combination' is required." SEC v. Talley Industries, Inc., 399 F.2d 396, 403 (2d Cir. 1968). Here, there is no combined arrangement of the type found by the Commission in Talley -- a implied alliance between a fund and an affiliate concerning the purchase of stock of a particular company -- and to find a combination here would be to find a combination almost anytime a fund consulted with an affiliate. That, in our view, would be too broad a reading of the statute. To act jointly requires some written or oral agreement or the taking of some action with another person that involves more than following instructions that one is required by law to observe.

We reach the same conclusion under Rule 17d-1, which defines a "joint enterprise or other joint arrangement" as an arrangement where an investment company and an affiliate "have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking." The Travelers and Fund U have no meaningful joint participation with CFS; they have simply agreed to honor a type of continuing redemption request submitted by their contract owners. Thus, in our opinion, the redemption procedure is not subject to Rule 17d-1.

Finally, and perhaps most importantly, the purposes of § 17(d) and Rule 17d-1 would not be advanced by construing them to cover this situation. Section 17 was designed in general to deal with transactions of an investment company in which affiliates have a conflict of interest, and § 17(d)'s stated purpose is to prevent the participation by an investment company in a joint transaction "on a basis different from or less advantageous than that of [the affiliated] participant." § 17(d); see also 1940 Act Study Report at 494, 497 (discussing purposes). In this instance, there is no conflict between the investment company, Fund U, and CFS; the investment company is simply following the redemption instructions of some of its shareholders. Even if CFS, Travelers and Fund U could be said to be involved in some joint arrangement, Fund U and its shareholders are not in any way disadvantaged by the redemption procedure. The requirement that the participation not be "less advantageous" is either fully met or not meaningful in this context. The staff has taken no-action positions where the nature of the arrangement was such that there was a possibility that the purposes of § 17(d) and Rule 17d-1 might be compromised -- arrangements such as service agreements between a fund and an affiliate -- and has insisted that there be adequate safeguards to prevent overreaching. See, e.g., Merrill Lynch Capital Fund, Inc., 1990 SEC Noact LEXIS 1333 (Dec. 21, 1990) (citing other letters); Federated Securities Corp., 1983 SEC Noact LEXIS 2955 (Oct. 21, 1983).[4/] Here, the proposed redemption procedure simply does not even offer any opportunity for overreaching by CFS. Accordingly, it is our opinion that § 17(d) is not implicated and that there is no need for an order under Rule 17d-1.

E. Conclusion

For the reasons stated above, CFS's proposed fee collection arrangement for the CHART Program is, in our opinion, not prohibited by § 26(a)(2) of the 1940 Act, and Commission approval of that arrangement is not required by

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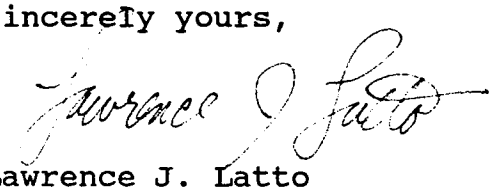
4/ In Federated Securities, the staff explained: "That Congress did not intend a service agreement to be subject to section 17(d) is also shown by its standard for rulemaking under section 17(d), i.e., 'for the purpose of limiting or preventing participation by such registered * * * company on a basis different from or less advantageous than that of such other participant.' This standard would have limited, if any, applicability to a service contract."

§ 17(d) of that Act or Rule 17d-1 thereunder. We therefore request the staff's advice that it will not recommend that the Commission take enforcement action if The Travelers collects and remits the fees for the CHART investment advisory program in the manner described in this letter.

Sincerely yours,



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