The Trust has complied with Amex Rule 18 by filing with the Exchange a certified copy of the preambles and resolutions adopted by the Board of Trustees on June 15, 1999, authorizing the withdrawal of the Trust Shares from listing on the Exchange and by setting forth in detail to the Amex the reasons for such proposed withdrawal and the facts in support thereof. The Amex has advised the trust that it would not interpose any objection to the withdrawal of the Trust Shares from listing on the Exchange.

The Trust's application relates solely to the withdrawal of the Trust Shares from listing on the Amex and shall have no effect upon the continued listing and registration of the New Corporation Stock on the NYSE. Moreover, by reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the New Corporation shall continue to be obligated to file reports with the Commission under Section 13 of the Act.

Any interested person may, on or before December 8, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–30545 Filed 11–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24140; File No. 812–11766]

Pacific Life Insurance Company, et al.; Notice of Application

November 17, 1999.

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

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act''), granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(B)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order amending an order previously issued to permit shares of the Pacific Select Fund (the ''Fund'') and shares of any other existing or future investment company that is designed to fund insurance products and for which Pacific Life Insurance Company, or any of its affiliates, may serve as investment manager, investment adviser, sub-adviser, administrator, manager, principal underwriter or sponsor (the Fund and such other investment companies being hereinafter referred to, collectively, as the ''Insurance Funds''), or shares of any current or future series of any Insurance Fund, to be sold to and held by: (1) Separate accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans (''Qualified Plans'' or ''Plans'') held outside of the separate account context.

Applicants

Pacific Life Insurance Company (formerly Pacific Mutual Life Insurance Company) (''Pacific Life''), Pacific Life & Annuity Company (formerly PM Group Life Insurance Company) (''PL&A''), Pacific Select Separate Account of Pacific Life Insurance Company (formerly Pacific Select Separate Account of Pacific Mutual Life Insurance Company (''Pacific Select Account''), Pacific Select Exec Separate Account of Pacific Life Insurance Company (''Pacific Select Exec Account''), Pacific Select Exec Separate Account of Pacific Life & Annuity Insurance Company (''PL&A Account'') (each a ''Separate Account''), and the Pacific Select Fund (collectively, the ''Applicants'').

FILING DATES: The application was filed on August 25, 1999.

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 on the application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 13, 1999 and should be accompanied by proof of service on the 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 the date of the hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Robin Yonis Sandlaufer, Esq., Pacific Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Mark Amorosi, Special Counsel, 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 SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (202–942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company organized as a Massachusetts business trust. The Fund issues shares in multiple series. Additional series of the Fund and additional Insurance Funds may be established in the future.

2. Pacific Life serves as the investment adviser to the Fund. Pacific Mutual Distributors, Inc. (''PMD'') serves as the Fund's distributor.

3. Pacific Life is a life insurance company based in California. Pacific Life is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Pacific Life is a subsidiary of Pacific LifeCorp, a holding company which, in turn, is a subsidiary of Pacific Mutual Holding Company, a mutual holding company.

4. PL&A is a life insurance company based in Arizona. PL&A, a wholly-owned subsidiary of Pacific Life, is authorized to conduct life insurance and annuity business in New York and certain other states.

5. The Pacific Select Account is registered as a unit investment trust under the 1940 Act, and currently is comprised of fourteen subaccounts called Variable Accounts. The assets in each Variable Account are invested in shares of the corresponding portfolios of the Fund, each of which pursues different investment objectives and policies. The assets of the Pacific Select Account may not be charged with any liabilities arising out of any other business conducted by Pacific Life, but the obligations of the Pacific Select Account, including benefits related to variable life insurance, are obligations of Pacific Life. The Pacific Select Account funds individual flexible premium variable life insurance policies.

6. The Pacific Select Exec Account is registered as a unit investment trust under the 1940 Act, and currently is comprised of 22 subaccounts called Variable Accounts. The assets in eighteen of the Variable Accounts are invested in shares of the corresponding portfolios of the Fund, and the assets of four of the Variable Accounts are invested in shares of the corresponding portfolios of M Fund, Inc., an open-end investment company of the series type registered under the 1940 Act. The Pacific Select Exec Account will not be charged with any liabilities arising out of any other business conducted by Pacific Life, but the obligations of the Pacific Select Exec Account, including liabilities related to variable life insurance, are obligations of Pacific Life. The Pacific Select Exec Account funds individual flexible premium variable life insurance policies.

7. The Pl&A Account is registered as a unit investment trust under the 1940 Act and currently is comprised of eighteen subaccounts called Variable Accounts. The assets in each of the Variable Accounts are invested in shares of the corresponding portfolios of the Fund. The PL&A Account will not be charged with any liabilities arising out of any other business conducted by PL&A, but the obligations of the PL&A Account, including liabilities related to variable life insurance, are obligations of PL&A. The PL&A Account funds individual flexible premium variable life insurance policies.

8. An order was issued by the Commission on September 30, 1987 (''Prior Order'') which, among other things, granted exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and paragraph (b)(15) of Rule 6e–3(T) to the extent necessary to permit the Fund to be offered to the Pacific Select Account, other registered and unregistered separate accounts of Pacific Life or other affiliated life insurers that offer variable annuity contracts and flexible premium variable life insurance policies, and to separate accounts of unaffiliated life insurers offering variable annuity contracts or scheduled or flexible premium variable life insurance contracts.

9. Pacific Life and/or its affiliates have purchased shares of certain Portfolios of the Fund in connection with initial capital investments. Apart from the investments for initial capital, the Fund currently offers its shares only to separate accounts of Pacific Life, and therefore serves as an investment medium only for persons who own a variable annuity contract or flexible premium variable life insurance policy issued or administered by Pacific Life. The Insurance Funds, however, intend to offer shares of certain of their existing and future series to Qualified Plans. Further, the Insurance Funds may in the future offer shares of their existing and future series to separate accounts of Pacific Life or its affiliates to serve as the investment vehicle for scheduled premium variable life insurance contracts. The Prior Order, however, would not permit the Insurance Funds to offer their shares to separate accounts funding flexible premium variable life insurance policies issued by Pacific Life or its affiliates if the Insurance Funds also offered their shares to Qualified Plans. Furthermore, the Prior Order would not permit the Insurance Funds to offer their shares to Qualified Plans, separate accounts of other insurance companies or separate accounts funding variable annuity contracts issued by Pacific Life or its affiliates if the Insurance Funds also offered their shares to separate accounts funding scheduled premium variable life insurance policies issued by Pacific Life or its affiliates.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act amending the Prior Order to grant exemptions from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 64–3(T)), to the extent necessary to permit shares of each existing and future series of each Insurance Fund to be sold to and held by (1) separate accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans (''Qualified Plan'' or ''Plans'') held outside of the separate account context.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any provision of the 1940 Act, or the rules or regulations thereunder, if and to the extent that such 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. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). For these purposes, a variable life insurance separate account refers to a separate account that funds scheduled premium variable life insurance contracts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Funds are also to be sold Qualified Plans.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate

account by Rule 6e–3(T) are available only where the Trust Account's underlying fund offers its shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *.'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. Because the relief under Rule 6e–3(T) is available only where shares are offered *exclusively* to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Funds are also to be sold to Qualified Plans.

5. The relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is in no way affected by the purchase of the Insurance Funds' shares by Qualified Plans. However, in that the relief under rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only where shares are offered *exclusively* to separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Funds are also to be sold to Qualified Plans. Applicants therefore request relief in order to have the participating insurance companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants assert that if the Insurance Funds were to sell shares only to Qualified Plans and/or separate accounts funding variable annuity contracts, no exemptive relief would be necessary. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans or to a registered investment company's ability to sell its shares to a Qualified Plan. It is only because some of the separate accounts that may invest in the Insurance Funds may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict between the separate accounts arises in this context, the participating insurance companies must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as an eligible investment. Applicants have concluded that the inclusion of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholder. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans arose, the Qualified Plans, unlike the separate accounts, could redeem their shares and make alternative investments. Applicants thus argue that allowing limited investment by Qualified Plans in the Insurance Funds should not increase the opportunity for conflicts of interest.

6. Since the Prior Order was issued, regulations under the Internal Revenue Code (''the Code'') have been issued that permit shares of an investment company to be offered directly to Qualified Plans outside of the separate account context as well as to insurance company separate accounts. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued Regulations (Treas. Reg. 1.817–5) that established diversification requirements for the investment portfolios underlying variable annuity and variable life contracts. The Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts.

7. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from acting or serving in various capacities with respect to a registered investment company. More specifically, paragraph (3) of Section 9(a) provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2).

8. Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund.

9. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. It is also unnecessary to apply Section 9(a) to the many individuals in various unaffiliated

insurance companies (or affiliated companies of participating insurance companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans. Applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other participating insurance companies or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contractworkers and Qualified Plan participants. Finally, because the Qualified Plans are not investment companies and will not be deemed affiliates by virtue of their shareholdings, no additional relief is required with respect to Qualified Plans. Rules 6e–2 and 6e–3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of participating insurance companies or their affiliates. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or employees of the Adviser or an affiliate who participate directly in the management or administration of an Insurance Fund. The monitoring described above would not benefit contractowners and Plan participants and would only increase costs, thus reducing net rates of return.

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the 1940 Act, to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(*1*) provide that the insurance company may disregard the voting instructions of its contractowners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make (or refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such companies or to approve or disapprove any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of such Rules).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contact; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adoting Rule 6e–29(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions undoubtedly were adopted in recognition of the same factors.

12. Applicants maintain that the Insurance Funds' sale of shares to Qualified Plans will not have any impact on the relief requests. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plan. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with certain types of Plan assets to certain specified persons. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plan nay have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Certain Qualified Plans, however, may provide for the trustee(s), an investment adviser, or another named fiduciary to exercise voting rights in accordance with instructions from participants. If a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contractowners and Plan participants with respect to voting of the respective Portfolio's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

13. Applicants state that prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. In this regard, applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different participating insurance companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated participating insurance companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated participating insurance companies may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements.

15. Applicants submit that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of the insurance company to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular participating insurance company's disregard of voting instructions nevertheless could conflict with the majority of contractowner voting instructions. The participating insurance company's action could arguably be different than the determination of all or some of the other participating insurance companies (including affiliated insurers) that the contractowners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the participating insurance company's judgment represents a minority position or would preclude a majority vote, the participating insurance company may be required, at an Insurance Fund's election, to withdraw its separate account's investment in the Insurance Fund, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contractowners and to Qualified Plans. The transfer agent for the Insurance Funds will inform each shareholder, including each separate account and each Qualified Plan, of its share ownership in an Insurance Fund. Each participating insurance company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans in any Insurance Fund will similarly present no conflict. The likelihood that voting instructions of insurance company separate account holders will ever be disregarded or that the possible withdrawal referred to immediately above will occur is extremely remote and this possibility will be known, through prospectus disclosure or disclosure in a Statement of Additional Information to any Qualified Plan choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans arises, the Plans may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans, of course, cannot be disregarded but must be counted and given effect.

17. Applicants submit that there is no reason why the investment policies of an Insurance Fund, or a series thereof, would or should be materially different from what they would or should be if such Insurance Fund or series funded only variable annuity contracts or variable life insurance polices, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans—long-term investment—coincides with that of variable contracts and should not increase the potential for conflicts. Each Insurance Fund, or series thereof, will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular participating insurance company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the participating insurance company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Funds. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contractowners can also be expected to provide economic justification for the creation of additional series of each Insurance Fund with a greater variety of investment objectives and policies.

19. Applicants note that Section 871(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, neither the Code, the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

20. Applicants submit that the ability of the Insurance Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contractowner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of contractowners or participants under the Qualified Plans, the Qualified Plans and the separate accounts have rights only with respect to their respective shares of the insurance Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants submit that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance policies. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain participating insurance companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Funds as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns, because participating insurance companies and Qualified Plans will

benefit not only from the investment and administrative expertise of Pacific Life, or any other investment adviser to an Insurance Fund or series, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Funds available for mixed and shared funding and permitting the purchase of Insurance Fund shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation.

23. Mixed and shared funding also may benefit variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the insurance Funds. This may benefit variable contractowners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible.

Applicants' Conditions

Applicants consent to the following conditions if an order is granted:

1. A majority of the Board of Trustees or Board of Directors (The ''Board'') of each Insurance Fund shall consist of persons who are not ''interested persons'' of the Insurance Fund, as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor the Insurance Fund for the existence of any material irreconcilable conflict among and between the interests of the contractowners of all separate accounts and of Plan participants investing in the Insurance Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (1) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws of regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund or series are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners and Plan trustees or participants; and (vi) a decision by a participating insurance company to disregard the voting instructions of countractowners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Fund and any participating insurance company (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contractowner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participants investing in an Insurance Fund under their agreements governing participation in the Insurance Fund, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant participating insurance companies and Qualified Plans shall, at their expense or, at the discretion of the investment adviser to an Insurance Fund, at that investment adviser's expense, and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irrconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from the relevant Insurance Fund or any series therein and reinvesting such assets in a different investment medium (including another series, if any, of such Insurance Fund); (ii) in the case of participating insurance companies, submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contractowners or variable life insurance contractowners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (iii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the participating insurance company may be required, at the Insurance Fund's election, to withdraw its separate account's investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Fund, to withdraw its investment in the Insurance Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies and Qualified Plans under their agreements governing participation in the Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the contractowners or, as applicable, Plan participants.

5. For the purposes of Condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed actions adequately remedies any material irreconcilable conflict, but in no event will the

Insurance Fund or its investment adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

7. Participating insurance companies will provide pass-through voting privileges to all variable contractowners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contractowners. Accordingly, such participating insurance companies will vote shares of each Insurance Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from such contractowners. Each participating insurance company will vote shares of each Insurance Fund or series held in its registered separate accounts for which no timely voting instructions are received, as well as shares held by any such registered separate account, in the same proportion as those shares for which voting instructions are received. Participating insurance companies shall be responsible for assuring that each of their separate accounts investing in an Insurance Fund calculates voting privileges in a manner consistent with all other participating insurance companies. The obligation to vote an Insurance Fund's shares and to calculate voting privileges in a manner consistent with all other registered separate accounts investing in an Insurance Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Insurance Fund. Each Plan will vote as required by applicable law and governing Plan documents.

8. An Insurance Fund will notify all participating insurance companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Fund shall disclose in its prospectus or statement of additional information that: (a) Shares of the Insurance Fund are offered to insurance company separate accounts which fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Insurance Fund and the interests of Qualified Plans investing in the Insurance Fund might at some time be in conflict; and (c) the Board will monitor the Insurance Fund for any material conflicts and determine what action, if any, should be taken.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the Application, then each Insurance Fund and/or the Participants, as appropriate, shall take steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. Each Insurance Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Fund), and in particular each Insurance Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, each Insurance Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. The Participants shall at least annually submit to the Board of an Insurance Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the Application and said reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of a Participant to provide these reports, materials and data to the Board of the Insurance Fund when it so reasonably requests shall be a contractual obligation of all Participants under their agreements governing participation in each Insurance Fund.

13. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Fund, the Insurance Fund shall require such Plan to execute a participation agreement with such Insurance Fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Fund.

Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24139; File No. 812–11572]

Davis Variable Account Fund, Inc., et al.; Notice of Application

November 17, 1999.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any