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Any interested person may, on or before January 31, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex 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.

Margaret H. McFarland,

Deputy Secretary.

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[Rel. No. IC-20828; File No. 812-9250]

The Penn Insurance and Annuity Company, et al.

January 10, 1995.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Penn Insurance and Annuity Company ("Company"), PIA Variable Annuity Account I ("Separate Account"), and Horner, Townsend & Kent, Inc. ("Horner").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 22(d), 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order to permit the Company (i) to deduct a mortality and expense risk charge under certain variable annuity contracts from the assets of the Separate Account, or any other separate account established by the company in the future to support materially similar variable annuity contracts (the "Contracts"), and (ii) to waive the contingent deferred sales charge for defined "medically related free withdrawals" and "disability related free withdrawals" under the Contracts.

FILING DATE: The application was filed on September 27, 1994.

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 this application by writing to the Secretary of the SEC 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 February 6, 1995 and 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 of the nature of the interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: C. Ronald Rubley, Associate General Counsel, The Penn Mutual Life Insurance Company, Independence Square, Philadelphia, Pennsylvania 19172.

FOR FURTHER INFORMATION CONTACT:

Mark C. Amorosi, Staff Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

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

Applicants' Representations

1. The Company is a Delaware stock life insurance company. The Company is a wholly owned subsidiary of The Penn Mutual Life Insurance Company ("Penn Mutual").

2. The Separate Account is a segregated investment account established under Delaware law on July 13, 1994 by the executive committee of the Company's board of directors. The Separate Account is registered under the 1940 Act as a unit investment trust.

3. Horner, a wholly owned subsidiary of Penn Mutual, is registered as a broker-dealer under the Securities Exchange Act of 1934. Horner will serve as the principal underwriter. The Contracts will be sold by licensed insurance agents who are registered representatives of Horner or of a registered broker-dealer who has entered into a selling agreement with Horner.

4. The Contracts are individual combination variable and fixed annuity contracts. The amounts and timing of purchase payments under the Contracts will be determined by Contract Owners, except as follows. The minimum initial purchase payment is \$2,000 for Contracts qualifying as individual

retirement annuities under Section 408 of the Internal Revenue Code of 1986, as amended, and for Contracts qualifying as tax deferred annuities under Section 403(b) of the Internal Revenue Code. The minimum initial purchase payment for non-qualifying Contracts is \$5,000. The minimum subsequent purchase payment is \$250 for all Contracts. Payments under a Contract in excess of \$1 million require the Company's prior approval.

5. The Contracts provide for five forms of annuity payment options: (1) an annuity for a specified number of years; (2) a life annuity; (3) a life annuity with payments guaranteed for 10 or 20 years; (4) a joint and survivor annuity; or (5) such other form of annuity as the Company may agree upon with the Contract Owner. Except for an annuity for a specified number of years, which is available only on a fixed basis, all of the options may be elected on a variable or fixed basis.

6. Two forms of administrative charges are deducted from the Contracts. First, the application states that on every contract anniversary prior to the Annuity Date and on every other date when the Variable Account Value is reduced to zero through a withdrawal or transfer, the Company will deduct from the Variable Account Value a contract administration charge of \$30 or, if less, 2% of the Variable Account Value. However, if the Variable Account Value is greater than \$50,000, there will be no such deduction. The application states that the charge is made by cancelling accumulation units credited to the Contract, with the charge allocated pro rata among the subaccounts comprising the Variable Account Value. Second, the Company will also deduct from the Separate Account a daily administration charge equal to an effective annual rate of 0.15% of the daily net assets of the Separate Account. The application states that these administration charges are guaranteed not to increase. The Company also states that the administrative charges are intended not to exceed the Company's anticipated administrative expenses over the periods the Contracts are in force. The Company represents that these charges will be deducted in reliance on Rule 26a-1 under the 1940 Act.

7. A contingent deferred sales charge (the "Sales Charge") of up to 6% may be deducted in the event of full or partial withdrawal from the contract value prior to the Annuity Date. The Sales Charge will be imposed only on withdrawals of purchase payments in cases where the purchase payment was made within seven years of the date of

the withdrawal. Purchase payments will be treated as withdrawn on a first in, first out basis. The following table shows the schedule of the Sales Charge that will be applied to withdrawal of a purchase payment:

Number of full contract years since purchase payment	Applicable charge (percent)
0	6
1	6
2	5
3	4
4	3
5	2
6	1
7	0

The Sales Charge may be reduced on Contracts sold to a trustee, employer or similar party pursuant to a retirement plan or to a group of individuals, if such sales are expected to involve reduced sales expenses. The Applicant represents that the reduction will not be unfairly discriminatory to any Contract Owner.

8. The Contracts provide that several types of withdrawals may be made without incurring a Sales Charge.

a. *Seven-Year-Old Purchase Payments.* The Contract Owner may withdraw any purchase payment which was made more than seven years before the withdrawal without incurring a contingent deferred sales charge.

b. *15% Free Withdrawals.* On the last day of the first Contract Year and once each Contract Year thereafter, the Contract Owner may withdraw 15% of the total purchase payments without incurring the contingent deferred sales charge.

c. *Medically Related Free Withdrawal.* After the first Contract Year and before the Annuity Date, the Contract Owner may withdraw, without incurring a contingent deferred sales charge, up to the lesser of \$500,000 or the Contract Value if certain medically related contingencies occur. This free withdrawal is available if the Contract Owner is (1) first confined in a nursing home or hospital while the Contract is in force and remains confined for at least 90 days in a row or (2) first diagnosed as having a fatal illness (an illness expected to result in death within two years for 80% of diagnosed cases) while the Contract is in force. This benefit is not available if the Contract Owner's age at time of issue is greater than 75 or if the Contract Owner has certain pre-existing conditions.

d. *Disability Related Free Withdrawal.* After the first Contract Year, the Contract Owner may withdraw, without incurring a contingent deferred sales

charge, part or all of the Contract Value if the Contract Owner becomes totally disabled.

e. *Other Free Withdrawals.* There is no contingent deferred sales charge imposed upon minimum distributions which are required by the Internal Revenue Code qualified Contracts.

9. For all Contracts issued in connection with the Separate Account, the Company deducts a Mortality and Expense Risk Charge that is equal, on an annual basis, to 1.25% of the average daily net assets of the Separate Account: approximately 0.90% for mortality risks and 0.35% for expense risks.

The mortality risks assumed by the Company arise in part from the Company's guarantee that it is obligated to make annuity payments at least equal to payments calculated based on annuity tables provided in the Contracts, regardless of how long an annuitant lives and regardless of any general improvement in life expectancy.

The Company also assumes a mortality risk in connection with the provision of a death benefit. If the Contract Owner dies prior to the Annuity Date, the Company will pay the beneficiary the greater of (1) the Contract Value (*i.e.*, the Variable Account Value plus the Fixed Account Value) for the valuation period in which proof of death and any other required information needed to make payment is received at the Company's office; or (2) the sum of the Fixed Account Value on the date the above information is received at the Company's office and the net purchase payments allocated to the Separate Account.

The application states that where the Contract Owner dies before the age of 80 and where permitted by state law, an "enhanced death benefit" will be paid to the beneficiary if it is greater than the death benefit described previously. The "enhanced death benefit" is the sum of: (1) The Fixed Account Value, and (2) the net purchase payments allocated to the Separate Account plus interest accumulated at an annual interest rate of 5% through the Contract Owner's attained age 69, and interest accumulated at an annual interest rate of 3% for years subsequent to attained age 70.

The expense risk assumed by the Company is the risk that the Company's administrative charges will be insufficient to cover actual administrative expenses over the life of the contract.

Applicants' Legal Analysis and Conditions

1. Pursuant to Section 6(c) of the 1940 Act, the Commission may, by order

upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation 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.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Contracts. Applicants request that the order also permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established by the Company in the future to support variable annuity contracts offered on a basis similar in all material respects to the basis on which the Contracts are offered.

4. Applicants submit that their request for an order that applies to the Separate Account and to future separate accounts issuing contracts that are similar in all material respects to the Contracts is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources.¹ Applicants further represent that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Investors would not receive any additional benefit or additional protection by the Company being required to repeatedly seek exemptive

¹ Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

relief with respect to the same issues addressed in this application.

5. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks undertaken by the company and within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of the mortality risks, taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates, the nature of the death benefit provided, the number of transfers permitted without charge and the ability to make free withdrawals. The Company represents that it will maintain at its principal office a memorandum, available to the Commission upon request, setting forth in detail this analysis.

6. Applicants acknowledge that it is possible that the Company's revenues from the contingent deferred sales charge could be less than its costs of distributing the Contracts. In that case, the excess distribution costs would have to be paid out of the Company's general assets, including the profits, if any, from the mortality and expense risk charge. In those circumstances, a portion of the mortality and expense risk charge might be viewed as offsetting a portion of the costs relating to the distribution of the Contracts. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and Contract Owners. The basis for such a conclusion will be set forth in a memorandum maintained by the Company at its principal office and available to the Commission upon request.

7. The Company represents that the Separate Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b-1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

8. Pursuant to Section 6(c) of the 1940 Act, the Applicants also request that the Commission issue an order to provide exemptive relief from Section 22(d) to the extent necessary to permit the Applicants to waive the contingent deferred sales charge under the Contracts and Future Contracts in the event of the contingencies triggering the right to make the medically related or a disability related free withdrawal as defined above.

9. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a public offering price described in the prospectus. Rule 6c-8 adopted under the 1940 Act permits variable annuity separate accounts to impose a deferred sales charge. Although Rule 6c-8, unlike proposed Rule 6c-10, does not impose any conditions on the ability of the investment company involved to provide for variations in the deferred sales charges, Rule 6c-8 (again unlike proposed Rule 6c-10) does not provide an exemption from Section 22(d). Applicants recognize that the proposed waiver of the contingent deferred sales charge in connection with "medically related free withdrawals" or "disability related free withdrawals" described above could be viewed as causing the Contracts to be sold at other than a uniform offering price. Rule 22d-1 is not directly applicable to Applicants' proposed waiver of the contingent deferred sales charge because that rule has been interpreted as granting relief only for scheduled variations in front-end sales loads, not deferred sales loads.

10. Rule 22d-2 under the 1940 Act exempts registered variable annuity accounts, their principal underwriters, dealers and their sponsoring insurance companies from Section 22(d) to the extent necessary to permit variations in the sales load or in any administrative charge or other deductions from the purchase payments, provided that such variations reflect differences in costs or services, are not unfairly discriminatory and are adequately described in the prospectus. Applicants, however, do not represent that the waiver of the withdrawal charge under the defined circumstances reflects differences in sales costs or services, and, for that reason, Applicants do not rely on Rule 22d-2 for the requested relief, even assuming that Rule 22d-2 does apply to deferred sales loads.

11. Applicants submit that the proposed waiver is consistent with the policies of Section 22(d) and the rules promulgated thereunder. One of the purposes of Section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Applicants represent that, to the extent permitted by state law, the provisions relating to "medically related free withdrawals" or "disability related free withdrawals" will be included in all Contracts. Eligibility will be based on the Contract Owner experiencing the

defined medically related contingencies. Therefore, the benefit will not unfairly discriminate among Contract Owners. Applicants submit that the waiver is advantageous to Contract Owners by permitting them, upon experiencing a defined contingency, to make withdrawals from the Contract without imposition of the contingent deferred sales charge. Applicants represent that the waiver will not result in dilution of the interests of any other Contract Owners. Applicants also submit that waiving the contingent deferred sales charge under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

12. Applicants represent that the waiver of the contingent deferred sales charge in connection with "medically related free withdrawals" and "disability related free withdrawals" meets the substantive requirements of Rule 22d-1 in that the waiver will be uniformly available to all eligible Contract Owners, except where prohibited by state law, and that this provision will be adequately described in the prospectus of the Contracts.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 22(d), 26(a)(2) and 27(c)(2) of the 1940 Act to permit the Company (i) to deduct the mortality and expense risk charge from the assets of the Separate Account under the Contracts and (ii) to waive the contingent deferred sales charge for defined "medically related free withdrawals" and "disability related free withdrawals" under the Contracts meet the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

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THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.