

[Release No. IC-21143; 812-9436]

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

June 19, 1995.

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

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pacific Mutual Life Insurance Company ("Pacific Mutual"), Separate Account A (the "Separate Account"), and Pacific Equities Network ("PEN").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Act granting an exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Pacific Mutual to deduct a mortality and expense risk charge from the assets of the Separate Account or any other separate account that Pacific Mutual establishes to fund certain individual flexible premium combination fixed/variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 17, 1995, and was amended on June 13, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 14, 1995, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Robin Yonis Sandlaufer, Esq., Pacific Mutual Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942-0654, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The

complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Pacific Mutual, a mutual life insurance company, is organized in California, and is authorized to do business in the District of Columbia and all states except New York.

2. The Separate Account was established by Pacific Mutual as a funding medium for the Contracts. The Separate Account is registered with the SEC as a unit investment trust under the Act. Units of interest in the Separate Account under the Contracts will be registered under the Securities Act of 1933. Pacific Mutual is the depositor and sponsor of the Separate Account. Applicants request that the relief sought herein also apply to any other separate account ("Other Account") established by Pacific Mutual to fund the Contracts, as well as other contracts that are substantially similar in all material respects to the Contracts ("Future Contracts").

3. The Separate Account currently is divided into eleven subaccounts ("Subaccounts"), each of which will invest solely in shares of a corresponding series of Pacific Select Fund (the "Fund"), an open-end management investment company. Other series of the Fund, other investment companies or series of other investment companies, or other investment vehicles may be available for investment in the future through additional subaccounts and/or Other Accounts.

4. PEN, an indirect wholly-owned subsidiary of Pacific Mutual, will serve as principal underwriter of the Contracts. PEN is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Applicants request that the relief sought herein also apply to any other entity that is registered with the SEC as a broker-dealer, is a member of the NASD and that may, in the future, serve as the principal underwriter of the Contracts or any Future Contracts.

5. The Contracts, which include the Pacific Portfolios Contract and the Pacific One Contract, are individual flexible premium combination fixed/variable annuity contracts. They may be purchased on a non-tax qualified basis, or in connection with certain retirement plans that qualify for special federal income tax treatment under the Internal Revenue Code of 1986.

6. Each Contract requires certain minimum initial purchase payments

and requires a certain minimum for any additional payments. A Pacific Portfolios Contract may be purchased with a minimum initial purchase payment of \$5,000 in the case of a non-tax qualified Contract, or \$2,000 in the case of a tax-qualified Contract. Minimum purchase payment requirements are waived in certain cases. Additional payments may be made at any time, but must be at least \$250 (\$25 in the case of a tax-qualified Contract). A Pacific One Contract may be purchased with a minimum initial purchase payment of \$25,000. Additional payments must be at least \$1,000. Purchase payments or amounts already allocated to the Subaccounts or the fixed option (these allocated amounts plus any amount held in Pacific Mutual's loan account to secure contract debt may be referred to as the "Contract Value") may be allocated to one or more of the Subaccounts of the Separate Account which have been established to support the Contracts or to the fixed option, which is funded by Pacific Mutual's general account.

7. Several annuity payout options, including both fixed and variable payment options, are available under the Contracts. Each Contract also will provide for a death benefit if the annuitant dies during the accumulation period. Generally, the death benefit will equal the greater of (a) total purchase payments (less prior withdrawals), or (b) the Contract Value. Death benefits may be higher under certain circumstances.

8. Pacific Mutual incurs certain costs in connection with the distribution of the Pacific Portfolios Contracts and the Pacific One Contracts. No sales charges are deducted from purchase payments under the Contracts prior to their allocation to the Contract Value.

9. Purchase payments on Pacific Portfolios Contracts are subject to a contingent deferred sales charge ("CDSC") on withdrawals prior to annuitization. The CDSC is calculated as a percentage of the total withdrawal subject to the CDSC and, in the case of partial withdrawals, is deducted from the Contract Value remaining after the Contract owner is paid the amount requested. The amount of the CDSC imposed on withdrawal will depend on the "age" of the amount withdrawn that is subject to the CDSC, as follows:

Age of payment	Deferred sales charge (percent)
1	7
2	7
3	6
4	5
5	3

Age of payment	Deferred sales charge (percent)
6	1
7 or more	0

A purchase payment is considered to have an "age" of 1 from the day it is effective until the next succeeding Contract anniversary. No CDSC is imposed on annuitized Contract Value or in connection with payment of death benefits. Nor will a CDSC be assessed (a) on earnings under a Contract, or (b) on withdrawals in any Contract year aggregating up to 10% of the Contract owner's purchase payments otherwise subject to a CDSC, measured at the time of withdrawal. In calculating any CDSC, or in calculating the 10% available for free withdrawal, Pacific Mutual will assume that a Contract owner's earnings are withdrawn first, followed by the Contract owner's purchase payments in the order in which they are paid. Pacific Mutual does not expect that the CDSC will be sufficient to cover the sales expenses of Pacific Portfolios Contracts. Pacific Mutual will pay any additional sales expenses relating to Pacific Portfolios Contracts.

10. Pacific One Contracts are not subject to sales charges. Pacific Mutual will pay sales expenses relating to Pacific One Contracts from its general account, which may include amounts derived from the mortality and expense risk charge.

11. Pacific Mutual may deduct a charge for premium taxes. The tax rates currently range from 1% to 4%. A premium tax may be imposed upon purchase payments at the time they are made, on Contract Value upon fully or partial withdrawals, upon annuitization, or when converted into another benefit payment.

12. Pacific Mutual does not currently impose a transaction charge on the Contracts for the administrative costs of transfers among the Subaccounts and to the fixed option, and withdrawals, but reserves the right to do so. These charges may be up to \$15 on each transfer in excess of 15 transfers in any Contract year, and \$15 on each partial withdrawal in excess of 15 partial withdrawals in any Contract year.

13. Pacific Mutual will charge an annual fee of \$40 against each Contract to compensate it for administering the Contract, maintaining records, and preparing and distributing annual reports and statements. The annual fee will be assessed each anniversary of the Contract and at the time of a full withdrawal of any Contract Value not annuitized only if, in either case, the Contract Value is less than a specified

amount on that date. The annual fee is guaranteed not to increase for the life of the Contract.

14. Pacific Mutual will impose a charge against the assets in the Separate Account to compensate it for issuance and administration of the Contracts and operation of the Separate Account. This charge will accrue daily against the value of the net assets of each Subaccount attributable to the Pacific Portfolios and Pacific One Contracts, at an annual rate guaranteed for the life of the Contract not to exceed .15%.

15. Applicants represent that the charges for administration of the Contracts and operation of the Separate Account, including any annual fee, the administrative fee, and any future transfer or withdrawal transaction fees, will be deducted from the Subaccounts or from the Contract Value allocated to the Subaccounts in reliance on rule 26a-1 under the Act, and will not be greater than the cost of the administrative services to be provided over the life of the Contract. Pacific Mutual does not expect or intend to make a profit from the annual fee, administrative fee, or any future transfer or withdrawal transaction fees.

16. Pacific Mutual proposes to assess a charge against the Contract Value allocated to the Subaccounts to compensate it for bearing certain mortality and expense risks under the Contracts. The aggregate mortality and expense risk charge will be equal, on an annual basis, to 1.25% of the value of the net assets in each Subaccount. Of this amount, approximately .80% will be charged to cover mortality risk and approximately .45% will be charged to cover expense risk. This rate of 1.25% will be guaranteed not to increase for the duration of a Contract.

17. The mortality risk arises from Pacific Mutual's contractual obligation, where a Contract owner selects an annuity option with a life contingency, to make periodic annuity payments regardless of how long all annuitants or any individual annuitant lives. Contract owners are thus assured that neither an annuitant's greater-than-expected longevity nor a greater-than-expected improvement in life expectancy generally will adversely affect the number or amount of annuity payments the annuitant will receive under the Contracts. Where a Contract has been purchased and a life contingency annuity option selected, this eliminates the annuitant's risk of outliving the accumulated funds. Pacific Mutual assumes a mortality risk in connection with payment of the death benefit under each Contract because the death benefit could exceed the Contract Value. Pacific

Mutual also incurs a mortality risk in connection with the "step-up" of the guaranteed minimum amount of death benefits under each Contract under certain circumstances. There is no extra charge for this guarantee. The expense risk assumed by Pacific Mutual is that its actual expenses in issuing and administering the Contracts and operating the Separate Account will exceed the amount anticipated or recovered through the annual administrative charges.

18. If the mortality and expense risk charge is insufficient to cover the assumed risk, Pacific Mutual will bear the loss. Conversely, if the mortality and expense risk charge exceeds the amount necessary to cover the assumed risk, the excess may be used for, among other things, the payment of distribution, sales, and other expenses. Pacific Mutual currently anticipates a profit from the mortality and expense risk charge.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any Other Account under the Contracts or Future Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), in relevant part, prohibit a principal underwriter for, or depositor of, a registered unit investment trust from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a qualified trustee or custodian, within the meaning of section 26(a)(1), and are held under arrangements that prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Pacific Mutual's deduction of a mortality and expense risk charge from the assets of the Separate Account may be deemed to be a payment prohibited by sections 26(a)(2)(C) and 27(c)(2).

3. Section 6(c) authorizes the SEC, by order upon application, to conditionally or unconditionally grant an exemption from any provision of the Act, or any rule or regulation promulgated 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 Act.

4. Applicants believe that the requested order meets the standards of section 6(c). With respect to the exemption requested in connection with any Other Account and/or Future Contracts, applicants believe that the requested order would promote efficiency and competitiveness in the market for variable annuities by reducing the administrative costs and delay incurred by Pacific Mutual in seeking, what is essentially, redundant relief. Applicants believe that no incremental benefit or protection would inure to investors if Pacific Mutual were required to seek such further exemptive relief.

5. Applicants believe that Pacific Mutual is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the proposed mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The charge is a reasonable one to compensate Pacific Mutual for the risks that: (a) Annuitants under the Contracts will live longer individually or as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts; (b) the Contract Value will be less than the death benefit; and (c) administrative expenses will be greater than amounts derived from the administrative charges.

6. Pacific Mutual represents that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Pacific Mutual's analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, existence of charge level guarantees, any death benefit guarantees, guaranteed annuity rates, and other policy options. Pacific Mutual will maintain at its administrative offices, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Pacific Mutual also represents that the mortality and expense risk charge under any Future Contract will be within the range of industry practice for comparable annuity products at the time such Future Contract is first offered. Pacific Mutual will maintain at its administrative offices, and make available to the SEC upon request, a memorandum setting forth in detail the products analyzed in the course of, and

the methodology and results of, its comparative survey undertaken in connection with such Future Contract.

8. Applicants acknowledge that, if a profit is realized from a mortality and expense risk charge, all or a portion of such profit may be available to pay Pacific Mutual's distribution expenses. Pacific Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements for the Contract will benefit the Separate Account or Other Accounts and the Contract owners. The basis for that conclusion is set forth in a memorandum that will be maintained by Pacific Mutual at its administrative offices and will be made available to the SEC upon request. Pacific Mutual will not offer any Future Contract subject to a mortality and expense risk charge unless and until it has concluded that there is a reasonable likelihood that the distribution financing arrangements proposed for such Future Contract will benefit the Separate Account or the applicable Other Account and the owners of such Future Contract. Pacific Mutual will maintain at its administrative offices, and will make available to the SEC upon request, a memorandum setting forth the basis for that conclusion.

9. Pacific Mutual represents that the Separate Account and any other Account will invest only in those management investment companies that undertake, in the event such company should adopt a plan under rule 12b-1 under the Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not "interested persons" of such company, formulate and approve any such plan.

Conclusion

For the reasons set forth above, applicants believe that the requested 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 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-15502 Filed 6-23-95; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 21142; 811-6470]

Smith Barney Shearson FMA® Trust; Notice of Application

June 19, 1995.

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

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

APPLICANT: Smith Barney Shearson FMA® Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 11, 1991, applicant registered under the Act, and on November 12, 1991, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1993. Applicant's Registration Statement became effective on January 24, 1992.