

participants materially and adversely affected by the material irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plans participant vote.

6. The Investment Manager, all Participating Insurance Companies, and Participating Plan will be promptly informed of any Board's determination that an irreconcilable material conflict exists, and its implications.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

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

9. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to

Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in the funds and the interests of Plans investing in the Funds may conflict; and (c) the Board will monitor the Funds for any material conflicts of interest and determine what action, if any, should be taken.

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

11. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if Rule 6e-3 under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent applicable.

12. No less than annually, the Investment Manager, the Participating Insurance Companies and Participating Plans, shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Investment Manager, Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of the Investment Manager, all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan participant shareholder should become an owner of 10% or more of the assets of a Fund, such Plan or Plan participant shareholder will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of the Fund.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 95-16997 Filed 7-11-95; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. IC-21186; File No. 812-9596-01]

#### CIGNA Life Insurance Company, et al.

July 5, 1995.

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

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

**APPLICANTS:** CIGNA Life Insurance Company ("CIGNA Life"), CIGNA Variable Annuity Separate Account I (the "Account"), certain separate accounts that may be established by CIGNA Life in the future to support certain variable annuity contracts issued by CIGNA Life (the "Other Accounts", collectively, with the Account, the "Accounts") and Cigna Financial Advisors, Inc. ("Cigna").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(32), 26 (a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting CIGNA Life to deduct from the assets of the Accounts the mortality and expense risk charge imposed under certain variable annuity contracts issued by CIGNA Life (the "Existing Contracts") and under any other variable annuity contracts issued by CIGNA Life which are substantially

similar in all material respects to the Existing Contracts and are offered through any of the Accounts (the "Other Contracts", together, with the Existing Contracts, the "Contracts").

Additionally, where the Contract owner has selected an optional death benefit, the order would permit Applicants to deduct from the value of the Contract an age and gender based charge for the benefits selected. The charge would be deducted upon the occurrence of one of the following events: Upon the Contract anniversary; upon annuitization of the Contract; upon surrender of the Contract; or upon payment of the death benefit.

**FILING DATE:** The application was filed on May 10, 1995.

**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 Commission by 5:30 p.m. on July 31, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Robert A. Picarello, Esq., S-321, Connecticut General Life Insurance Company, 900 Cottage Grove Road, Hartford, Connecticut 06152.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both 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. CIGNA Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of Connecticut General Life Insurance Company, which is, in turn, wholly owned by CIGNA Holdings Inc. CIGNA Holdings Inc. is wholly owned by CIGNA Corporation. The Account, established July 6, 1994 under Connecticut law, is registered with the Commission as a unit investment trust. The Account will fund

the Existing Contracts issued by CIGNA Life. Applicants represent that the Other Accounts will be organized as unit investment trusts and will file registration statements under the 1940 Act and the Securities Act of 1933.

2. Cigna will serve as the distributor of and the principal underwriter for the Existing Contracts. The application states that Cigna is also expected to serve as the distributor of and the principal underwriter for the Other Contracts. Cigna is a wholly owned subsidiary of Connecticut General Corporation which, in turn, is a wholly owned subsidiary of CIGNA Corporation. Cigna is a broker dealer registered under the Securities Exchange Act of 1934, an investment advisor registered under the Investment Advisers Act of 1940, and a member of the National Association of Securities Dealers, Inc.

3. The Accounts are comprised of subaccounts (the "Subaccounts"). The assets of each Subaccount of an Account will be invested in a corresponding portfolio of one of five investment companies (the "Funds"). Currently, the Funds have seventeen portfolios available for investment. Applicants state that each of the Funds is a diversified, open-end management investment company. Applicants also state that the number and identity of available Funds and investment portfolios may change.

4. The Existing Contracts are combination fixed and variable annuity contracts issued on an individual basis. The Existing Contracts may be purchased on a nonqualified basis or with the proceeds from certain plans qualifying for favorable tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"). The minimum initial premium is \$2,500 and the minimum for subsequent premiums is \$100. A minimum initial premium of \$2,000 will be permitted for an Individual Retirement Annuity under Section 408 of the Code.

5. The Existing Contracts provide for certain guaranteed death benefits at no charge if an optional death benefit is not selected. The guaranteed death benefit is the value of the Account plus the value of the fixed account as of the date CIGNA Life receives due proof of death and a payment election. If the owner of a Contract dies prior to the annuity date, the death benefit will be paid to the beneficiary.

6. CIGNA Life imposes an annual administrative fee of \$35 on Contracts having a Contract value of less than \$100,000. Until the earlier of the annuity date or a surrender of the Contract, the fee will be deducted pro

rata from all of the Subaccounts of the Account in which the owner of the Contract invests. Where a variable payout has been selected after the annuity date, the fee will be deducted proportionately and in installments from the annuity payments. Applicants state that the annual administrative fee partially compensates CIGNA Life for administrative services associated with the Contracts and the Account.

7. CIGNA Life also deducts a daily administrative expense charge equal annually to .10% of the average daily net asset value of the Account. Applicants represent that CIGNA Life does not anticipate a profit from either the annual administrative charge or from the daily administrative charge. Applicants also state that the charges are guaranteed not to increase for a Contract once that Contract has been issued. Finally, Applicants state that CIGNA Life will rely upon and comply with Rule 26a-1 under the 1940 Act in deducting both administrative charges.

8. A contingent deferred sales charge (the "Sales Charge") of up to 7% may be assessed by CIGNA Life upon withdrawal of a portion of the Account's value or upon surrender of the Contract within the first seven years of the Contract. The Sales Charge is a percentage of the amount withdrawn and is assessed against the balance remaining in the Account after withdrawal. The percentage declines depending upon how many years have passed since the withdrawn premium was originally made by the Contract owner. Applicants state that CIGNA Life guarantees that aggregate withdrawal charges under a Contract will not exceed 8.5% of total premiums paid.

9. CIGNA Life will impose a daily charge equal to an annual effective rate of 1.20% of the value of the net assets of the Account to compensate CIGNA Life for assuming certain mortality and expense risks in connection with the Contracts. Applicants state that approximately .70% of the 1.20% charge is attributable to mortality risk while approximately .50% is attributable to expense risk. The mortality and expense risk charge is guaranteed not to increase for a Contract once that Contract has been issued. If the mortality and expense risk charge is insufficient to cover actual costs of the risks assumed, CIGNA Life will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to CIGNA Life and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. Applicants state that CIGNA Life expects a profit from the mortality and expense risk charge.

10. Applicants state that the mortality risk borne by CIGNA Life arises from: (a) The contractual obligation of CIGNA Life to make annuity payments regardless of how long all annuitants or any individual annuitant may live; and (b) the guarantee of a death benefit. Applicants state that the expense risk assumed by CIGNA Life under the Contracts is the risk that the administrative charges assessed under the Contracts may be insufficient to cover actual administrative expenses incurred by CIGNA Life.

11. When an application for a Contract is made, one or more optional death benefits may be selected by the Contract owner. The mortality and expense risks charge does not compensate for the anticipated costs of providing the optional death benefits. There is, therefore, an additional charge for these benefits. Applicants describe four optional death benefits. Once election is completed, the optional death benefits chosen remain in effect for the life of the Contract absent a written request by the owner of the Contract for termination. Only one request for termination may be given. Optional death benefits must be selected at the time of application, and can not be added at a later date. The optional death benefits provide for the payment of a certain amount as the death benefit if the value of the Contract is less than that amount when the death benefit is paid.

12. On each anniversary of a Contract, a charge will be made for any optional death benefit in effect for the Contract year just ended. If the charge is applicable, it will be computed in accordance with mortality tables which are made a part of the Contract and reflect the age and the gender of the owner of the Contract. The charge is based upon the "amount at risk." The amount at risk is the excess of the death benefit which would be payable at the end of a Contract month over the Account value. There is no deduction made from the Account value until the Contract anniversary. At the Contract anniversary, the sum of any charges accrued at the end of each Contract month during the previous year is deducted. If the owner or the annuitant, as applicable, were to die on other than a Contract anniversary, all charges accrued will be deducted from the death benefit payable, the surrender proceeds or from the amount applied to provide annuity benefits.

13. Applicants state that CIGNA Life expects to derive a profit from the optional death benefit charge. Applicants also represent that the table of charges in the application, which sets

forth the charges for the optional death benefits, is guaranteed not to change for any Contract once that Contract is issued.

14. CIGNA Life may incur premium taxes relating to the Contracts and CIGNA Life will deduct these taxes upon withdrawal, annuitization or payment of the death benefit. CIGNA Life reserves the right to deduct charges made for federal, state or local taxes incurred by CIGNA Life in the future.

#### **Applicants' Legal Analysis and Conditions**

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks under the Contracts and for Applicants' assessment, where applicable, of the optional death benefit charge. Applicants state that the requested extension of relief to the Other Accounts and the Other Contracts is appropriate in the public interest. Applicants assert that the relief would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications and would, therefore, reduce administrative expenses and maximize efficient use of resources. Applicants argue that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of CIGNA Life to take advantage effectively of business opportunities as those opportunities arise. Applicants assert that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Finally, Applicants state that were CIGNA Life required to seek repeated exemptive relief with respect to the issues addressed in the application, no additional benefit or protection would be provided to investors through the redundant filings.

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

administrative services of a character normally performed by the bank itself.

3. Applicants assert that the charge for mortality and expense risks and the charge for the optional death benefit are reasonable in relation to the risks assumed by CIGNA Life under the Contracts.

4. Applicants represent that the mortality and expense risk charge is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon Applicants' analysis of a survey of comparable contracts issued by a large number of insurance companies taking into consideration such factors as: Current charge levels; benefits provided; charge level guarantees; and guaranteed annuity rates. Applicants represent that CIGNA Life will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology and the results of the comparative survey analyzed by Applicants.

5. Applicants represent that the charge for the optional death benefit is determined by multiplying, at the end of each Contract month, the actual amounts at risk under the benefit or benefits selected by the cost per \$1,000 of the amount at risk. Applicants also represent that the amounts at risk used will be actual figures, and that the determination of the figures on a monthly basis is reasonable. Applicants state that the cost per \$1,000 of amount at risk, *i.e.*, the cost of insurance charge, was determined by using assumptions regarding the expected mortality of the Contract owners. Applicants state that these assumptions reflect that the Contracts are both insurance and investment vehicles and could appeal to a different group than would a traditional annuity. CIGNA Life represents that there could be less self selection of this product by healthy individuals than a traditional annuity. Applicants further state that, because of the optional death benefits provided under the Contracts without health underwriting, there could be self selection by unhealthy individuals who would not ordinarily qualify for traditional life insurance. CIGNA Life asserts that the foregoing mortality assumptions are reasonable. Applicants state that CIGNA Life undertakes to maintain, at its home office and available to the Commission, a memorandum detailing the methodology used in determining that the optional death benefit charge is reasonable in relation to the risks assumed by CIGNA Life under the Contracts.

6. Applicants acknowledge that the Sales Charge will likely be insufficient to cover all costs relating to the distribution of the Contracts. To the extent distribution costs are not covered by the Sales Charge, CIGNA Life will recover its distribution costs from the assets of the general account. These assets may include that portion of the mortality and expense risk charge which is profit to CIGNA Life, and that portion of the optional death benefit charge that is profit. Applicants represent that CIGNA Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account, the Other Accounts and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by CIGNA Life at its home office and will be made available to the Commission.

7. CIGNA Life also represents that the Accounts will invest only in open-end management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by either the company's board of directors or the board of trustees, as applicable, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

8. Applicants also request an order under Section 6(c) granting exemptions from Sections 2(a)(32) and 27(c)(1) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary to permit the deduction from Account values of the optional death benefit charges at the following times: upon surrender; upon annuitization; or upon payment of a death benefit.

9. Section 27(c)(1) requires that periodic payment plan certificates, such as the Contracts, be redeemable securities. Section 2(a)(32) defines a "redeemable security" as one which, upon presentation to the issuer, entitles the holder to receive "approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." Rule 22c-1 under the 1940 Act prohibits redemptions "except at a price based on the current net asset value of such security which is next computed \* \* \*." Applicants concede that where the optional death benefit charge is imposed upon annuitization, surrender or payment of the death benefit, the net dollar amount paid upon surrender or in the form of a death benefit, or applied to the purchase of annuity units under the Contract, will be less than the full accumulation unit value of the variable

portion of the Contract. Applicants state, however, that the gross proceeds will equal the full net asset value of the variable portion of the Contract. Applicants represent that the difference between the gross proceeds and the net dollar amount paid or applied will be equal to the unpaid aggregate charges for the optional death benefit that have accrued since the most recent Contract anniversary. Applicants state that if the cost for the optional death benefit were deducted from the value of the Contract upon accrual, there would be no difference between the gross proceeds and the net amount paid or applied. Applicants argue that payment of the accrued but unpaid charges out of the gross proceeds of redemption, annuitization or a death benefit should be viewed as a delayed deduction of otherwise permitted charges. Applicants assert that the prohibitions of Sections 2(a)(32) and 27(c)(1) and Rule 22c-1 are designed to prevent diminution or dilution of investment company assets and should not, therefore, be applied to a transaction that, but for its timing, would be otherwise permissible.

#### Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 2(a)(32), 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c-1 thereunder are necessary and 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.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 95-17051 Filed 7-11-95; 8:45 am]

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#### SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 95-2(9)]

#### Hodge v. Shalala; Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(2), the Commissioner of

Social Security gives notice of Social Security Acquiescence Ruling 95-2(9).

**EFFECTIVE DATE:** July 12, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1695.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after July 12, 1995. If we made a determination or decision on your application for benefits between June 21, 1994, the date of the Court of Appeals decision, and July 12, 1995, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security - Disability Insurance; 96.005 Special Benefits for Disabled Coal Miners.)