5. Applicants believe that the reorganizations are consistent with the policies and purposes of the Act. In addition, applicants state that the exchange of assets will be based on each Fund's relative net asset values. Further, applicants state that the trustees, including the non-interested trustees, have concluded that any potential benefits to Met Life, State Street, the Distributor, and their affiliates as a result of the reorganizations are on balance outweighed by the potential benefits to each Fund and its shareholders. Although income from the Acquiring Fund will be subject to taxation at the state level, whereas income from each Acquired Fund is exempt from taxation in the eponymous state, the trustees have determined that the benefits of the reorganization substantially offset the loss of this tax benefit to the shareholders of each Acquired Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28930 Filed 11–27–95;8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–21526; File No. 812–7659]

Vanguard Variable Insurance Fund, et al.

November 20, 1995.

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

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

APPLICANTS: Vanguard Variable Insurance Fund (''Fund'') and The Vanguard Group, Inc. (''Vanguard'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e–2(b)(15) and 6e–3(T) (b) (15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of the Fund to be sold to and held by variable annuity and variable life separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on December 20, 1990 and amended on July 23, 1991, August 11, 1995, November 1, 1995 and November 6, 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 the 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 December 15, 1995, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: P.O. Box 2600, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, on (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 SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Pennsylvania business trust registered under the 1940 Act as an open-end management investment company, currently consists of seven series, each with its own investment objective and policies. The Fund is a member of The Vanguard Group of Investment Companies (''The Vanguard Group''), a family of over 32 investment companies. The Fund and the other funds in The Vanguard Group obtain virtually all of their corporate management, administrative, shareholding accounting and distribution services at cost through their jointly owned subsidiary, The Vanguard Group, Inc. Vanguard Marketing Corporation (''VMC''), a broker-dealer subsidiary of The Vanguard Group, Inc., markets the shares of the investment companies in the Vanguard Group. An order granting the exemptive relief necessary to implement this arrangement (''Vanguard Order'') was issued by the Commission on February 25, 1981 (IC–11645) and amended on December 29, 1992 (IC–19184).

2. The Fund presently sells its shares only to separate accounts of Providian Life & Health Insurance Company (formerly, National Home Life Assurance Company) and First Providian Life & Health Insurance Company (formerly, National Home Life Assurance Company of New York) to fund variable annuity contracts. The annuity contracts are distributed without the imposition of a sales load. Vanguard, through VMC, is the sole distributor of the contracts and bears all expenses related to the distribution of such contracts. As a member of the Vanguard Group, the Fund contributes to the cost of VMC's distribution efforts in accordance with provisions of the Vanguard Order.

3. As a member of The Vanguard Group, the Fund contributes to distribution expenses of VMC under the Vanguard Modified Formula (''VMF'') on the same basis as the other funds in The Vanguard Group. The Fund currently accrues for such costs an amount of approximately .02% of assets annually to cover its share of the cost of distributing shares of the investment companies in The Vanguard Group. Applicants state that this amount is one tenth of the .20% limit contained in the Vanguard Order. Applicants represent that no part of this fee is paid to the Providian companies nor will they receive any other payments from either Vanguard or the Fund.

4. The Fund intends to sell its shares to separate accounts of Ameritas Life Insurance Corp. (''ALIC'') and separate accounts of other unaffiliated insurance companies (together with ALIC and Providian, ''Participating Insurance Companies'') to serve as the investment vehicle for variable annuity contracts, scheduled premium variable life insurance contracts and flexible premium variable life insurance contracts (collectively, ''Variable Contracts'').

5. Although ALIC may offer variable annuity products in the future, it currently plans to offer and distribute, through Ameritas Investment Corp. its principal underwriter, variable life insurance contracts utilizing the Fund as their underlying funding vehicle. These variable life insurance contracts will not be subject to a sales load, contingent deferred sales charge, or a surrender charge. The contracts will be subject, however, to a 3.5% premium charge (guaranteed not to exceed 5%) to reimburse ALIC for premium taxes and the expense of deferring the tax deduction of policy acquisition costs (''DAC Tax''). According to the Applicants, ALIC has applied for a Commission order that would permit the imposition of the DAC Tax charge without treating such charge as sales load. Applicants represent that no part of the VMF fee paid by the Fund to Vanguard is paid to ALIC nor will ALIC receive any other payments from either Vanguard or the Fund.

6. Applicants propose to sell shares only to Participating Insurance Companies which offer their Variable Contracts utilizing the Fund as their underlying funding vehicle, without the imposition of a sales load, contingent deferred sales charge, or surrender charge. Applicants represent that, if such Participating Insurance Companies anticipate imposing a DAC Tax charge, they will have received the appropriate exemptive order from the Commission before imposing such charge. Applicants affirm that no portion of the Fund's contribution to Vanguard for distribution expenses will be paid to the Participating Insurance Companies, nor will such Participating Insurance Companies receive any other payments from either Vanguard or the Fund. Any participation agreement between the Fund and a Participating Insurance Company will include the requirements contained in this paragraph as conditions to such agreement.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account (and any investment adviser, principal underwriter and depositor thereof) by Rule 6e–2(b)(15), however, are not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated insurance company (''mixed funding''). In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying investment company are offered to variable annuity or variable life insurance separate accounts of unaffiliated insurance companies (''shared funding''). Accordingly, Applicants seek an order exempting scheduled premium variable life insurance separate accounts (and, to the extend necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed funding and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, 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 (and to any investment adviser, principal underwriter and depositor thereof) by Rule 6e–3(T)(b)(15) permit mixed funding of flexible premium variable life insurance but preclude shared funding. Accordingly, Applicants seek an order exempting flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rule 6e–3(T)(b)(15) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to separate accounts in connection with shared funding.

3. Section 9(a) of the 1940 Act provides that it is unlawful for company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). However, Rule 6e–2(b)(15) (i) and (ii) and Rule 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitation discussed above on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company. Applicants assert that although costs would increase, no regulatory benefit would result from the application of Section 9(a) to the many employees of Participating Insurance Companies who are not involved in the management or administration of the separate account. Applicants submit that Section 9(a) would still apply to those persons who should remain disqualified under the 1940 Act.

4. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Section 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 when required to do so by a state insurance regulatory authority. Paragraph (b)(15) of both Rules 6e–2 and 63–3(T) provides that the insurance company may disregard voting instructions if its 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 certain other provisions in the Rules. However, a particular insurer's disregard of voting instructions could conflict with the majority of contractowner voting instructions. Applicants state that if a particular insurance company's disregard of voting instructions conflicted with a majority of the contractowner's voting instructions, or precluded a majority vote, the Fund may require the insurer to withdraw its separate account's investment in the Fund.

5. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in some or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of insurance regulators in other states in which Participating Insurance Companies may be domiciled. Applicants submit that this possibility is no different or no greater than that which exists where a single insurer and its affiliates offer their insurance products in several states. Applicants state that there is no reason why the Fund's investment policies would or should be materially different from what they would or should be if it funded only variable annuity contracts or only variable life insurance contracts. Further, there is no reason to believe that different features of various types of contracts will led to different investment policies for different types of variable contracts. Applicants represent that the Fund will not be managed to favor or disfavor any particular Participating Insurance Company or type of insurance product. Applicants submit that there is no significant legal impediment to permitting mixed and shared funding and they note that separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Finally, Applicants assert that mixed and shared funding will have no adverse federal income tax consequences.

6. Applicants argue that mixed and shared funding should benefit variable contractowners by: (1) Eliminating a significant portion of the costs of

establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract costs. Applicants assert that the Fund's series will not be managed to favor or disfavor any particular insurer or type of insurance contract.

7. Finally, Applicants state that, as a member of The Vanguard Group, the Fund receives the same benefits and advantages offered to the other funds in The Vanguard Group. As discussed in the application and the Vanguard Order, such benefits include the name recognition, growth of complex-wide assets, and reduced per share expenses resulting from Vanguard's complex-wide and individual fund marketing and advertising. Applicants submit that VMC incurs costs and obligations to make such benefits available and it would not be fair to the other funds in The Vanguard Group, or permissible under the Vanguard Order, to free the Fund of its share of such costs, since it participates in the benefits of such efforts.

Applicants' Conditions

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

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

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, 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 series are being managed; (v) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or contractowners of different Participating Insurance Companies; or (vi) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating Insurance Companies and Vanguard will report any potential or existing conflicts to the Board. Participating Insurance Companies and Vanguard 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. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies under their agreements governing participation in the Fund and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If it is determined by a majority of the Board, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which could include: (i) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium (including another series of the Fund) or 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.*, annuity contractowners, life insurance contractowners, or variable 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 (ii) 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 Fund's election, to withdraw its separate account's investment in the 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 under agreements governing their participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do has been declined by a vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners for so long as the Commission continues to interpret the 1940 Act as requiring passthrough voting privileges for variable contractowners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their separate accounts in a manner consistent with the voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all present and future Participating Insurance Companies under their agreements governing participation in the Fund. Each Participating Insurance Company also will vote shares of the

Fund or series held in its separate accounts for which no timely voting instructions are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received.

7. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that (1) Its shares are offered to insurance company separate accounts that fund both annuity and life insurance contracts, (2) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Fund might at some time be in conflict, and (3) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

8. 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 Participating Insurance Companies 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.

9. If and to the extent Rule 6e–2 and Rule 6e–3(T) 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 this application, then the Fund and/or the Participating Insurance Companies shall take such 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 such rules are applicable.

10. The 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 the Fund), and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not a trust of the type specified in Section 16(c) of the 1940 Act) as well as with Sections 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and/or Vanguard shall at least annually submit to the Board 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 the Participating Insurance Companies to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund.

12. The Fund will sell shares only to Participating Insurance Companies which offer their variable annuity and variable life products utilizing the Fund as their underlying funding vehicle, without the imposition of a sales load, contingent deferred sales charge, or surrender charge. If such Participating Insurance Companies anticipate imposing a premium charge to reimburse them for the cost of deferring the tax deduction of policy acquisition costs, they will have received an appropriate exemptive order from the Commission before imposing such charge. No portion of the Fund's contribution to Vanguard for distribution expenses will be paid to the Participating Insurance Companies, nor will such Companies receive any other payments from either Vanguard or the Fund. Any participation agreement between the Fund and a Participating Insurance Company will contain the above-mentioned requirements as conditions of such agreement.

Conclusion

For the reason 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.

[FR Doc. 95–28927 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21522; No. 812–9542]

Warburg, Pincus Trust; Notice of Application

November 20, 1995.

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

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANT: Warburg, Pincus Trust (''Trust'') and Warburg, Pincus Counsellors, Inc. (''Counsellors'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company or series thereof that is designed to fund insurance products and for which Counsellors, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Trust, ''Funds'') to be sold to and held by: (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside the separate account content.

FILING DATE: The application was filed on March 17, 1995, and amended on July 11, 1995 and November 17, 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 by writing to the Secretary of the Commission 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 December 15, 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 requester's 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 5th Street, N.W., Washington, D.C. 20549. Applicants: Warburg, Pincus Trust, 466 Lexington Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special