

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 13, 1999.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24204; File No. 812-11814]

### Aetna Life Insurance and Annuity Company, et al.

December 16, 1999.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit the recapture of bonuses applied to purchase payments made under certain deferred variable annuity contracts.

**APPLICANTS:** Aetna Life Insurance and Annuity Company ("ALIAC") and its Variable Annuity Account B ("VA B"), Aetna Insurance Company of America ("AICA" together with ALIAC, "Aetna"), and any other separate accounts of ALIAC or AICA ("Future Accounts") that support in the future deferred variable annuity and certificates that are substantially similar in all material respects to the VA B contracts described herein (collectively, "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit, under specified circumstances, the recapture of bonuses applied to purchase payments made under: (i) deferred variable annuity contracts and certificates that ALIAC will issue through VA B (the contracts and certificates, including certificate data pages and endorsements, are collectively referred to herein as the

"VA B Contracts"), and (ii) deferred variable annuity contracts and certificates, that Aetna may issue in the future through VA B or any Future Account (collectively, the "Accounts"), that are substantially similar to the VA B Contracts in all material respects (the "Future Contracts" together with the VA B Contracts, "Contracts"). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Aetna, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively "Aetna Broker-Dealers").

**FILING DATE:** The application was filed on October 15, 1999, and amended and restated on December 14, 1999 ("Application").

**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 Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 2000 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156, Attn: J. Neil McMurdie, Esq.

**FOR FURTHER INFORMATION CONTACT:** Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

### Applicants' Representations

1. ALIAC is a stock life insurance company organized under the laws of the State of Connecticut. ALIAC serves as depositor for VA B, which was established in 1976 pursuant to

authority granted under a resolution of ALIAC's Board of Directors. ALIAC also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. ALIAC may establish one or more additional Future Accounts for which it will serve as depositor.

2. ALIAC is a stock life insurance company organized under the laws of the State of Connecticut. ALIAC serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. ALIAC may establish one or more additional Future Accounts for which it will serve as depositor.

3. ALIAC is the principal underwriter of VA B. ALIAC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "1934 Act") and is a member of the NASD. ALIAC will enter into arrangements with one or more registered broker-dealers, which may be affiliated with ALIAC, to offer and sell VA B Contracts. ALIAC also may enter into these arrangements with banks that may be acting as broker-dealers without separate registration under the 1934 Act pursuant to legal and regulatory exceptions. Further, ALIAC may distribute VA B Contracts directly. ALIAC may enter into similar arrangements for Future Contracts. ALIAC may act as principal underwriter for Future Accounts and distributor for Future Contracts. A successor entity also may act as principal underwriter for any of the Accounts and distributor for any of the Contracts.

4. VA B is a segregated asset account of ALIAC. VA B is registered with the Commission as a unit investment trust under the Act. VA B will fund the variable benefits available under the VA B Contracts. Units of interest in VA B will be registered under the Securities Act of 1933 (the "1933 Act"). ALIAC may issue Future Contracts through VA B. ALIAC and AICA also may issue Future Contracts through Future Accounts. The assets of VA B that are equal to the reserves and VA B Contract liabilities are not chargeable with liabilities arising out of any other business of ALIAC. Any income, gains or losses, realized or unrealized, from assets allocated to VA B are, in accordance with the VA B's Contracts, credited to or charged against VA B, without regard to other income, gains or losses of ALIAC. The same will be true of any Future Account of ALIAC or AICA.

5. The following is a discussion of the VA B Contracts. Future Contracts funded by VA B or any Future Account of ALIAC or AICA will be substantially

similar in all material respects to the VA B Contracts. Certain anticipated differences between VA B Contracts and Future Contracts are noted below. VA B Contracts will be sold by registered representatives of ALIAC and affiliated or unaffiliated broker-dealers with which ALIAC enters into selling agreements, as indicated above. ALIAC may issue VA B Contracts as individual or group flexible premium tax deferred variable annuity contracts. ALIAC may issue VA B Contracts in connection with retirement plans that qualify for favorable federal income tax treatment under Section 403 as a tax sheltered annuity or Section 408 of the Internal Revenue Code as an individual retirement plan ("Qualified Contract"). ALIAC also may issue VA B Contracts on a non-tax qualified basis ("Non-Qualified Contract"). VA B Contracts may be used for other purposes in the future, or offered only as Qualified Contracts or Non-Qualified Contracts.

6. A Non-Qualified Contract may be purchased with an initial payment of at least \$15,000. The minimum initial purchase payment for a Qualified Contract is \$1,500. Subsequent purchase payments must be at least \$50. ALIAC may impose maximum limitations on purchase payments. The maximum age of any annuitant as of the issue date is 85 (Death Benefit Option I) or 75 (Death Benefit Option II). ALIAC does not accept subsequent purchase payments after the annuity date.

7. An owner can allocate purchase payments or account value to one or more sub-accounts of VA B, each of which will invest in a corresponding portfolio of a mutual fund. In addition, VA B Contracts will permit purchase payments to be allocated to fixed interest options funded through the ALIAC Guaranteed Account (the "Guaranteed Account") and the fixed account (the "Fixed Account") which provide a guarantee of the purchase payment allocated thereto and interest for specified periods. A positive or negative adjustment, or "market value adjustment" ("MVA"), will be made to the account value in the Guaranteed Account upon a withdrawal, surrender or transfer from the Guaranteed Account prior to the end of the guaranteed term. When a death benefit is paid under a VA B Contract within six months of the date of death, only a positive aggregate MVA amount, if any, is applied to the account value attributable to amounts withdrawn from the Guaranteed Account. Because of the MVA feature, fixed interest option interests are registered under the 1933 Act pursuant to a Form S-2 Registration Statement. Contract owners may receive annuity

payments after annuitization on a fixed or variable basis.

8. VA B currently consists of 65 sub-accounts, 29 of which will be available under the VA B Contracts. Each sub-account will invest in shares of a corresponding portfolio ("Portfolio") of an open-end, diversified series management investment company registered under the Act (each a "Fund," collectively, the "Funds"). The Funds currently available are managed by various entities affiliated and unaffiliated with Aetna.

9. ALIAC, at a later date, may determine to create additional sub-accounts to invest in additional Portfolios. In addition, sub-accounts of VA B may be combined or eliminated from time to time. Future Contracts may offer Funds managed by the same or other investment advisers.

10. VA B Contracts provide for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among Investment Options, dollar cost averaging, death benefit and other features. VA B Contracts have the following charges: (i) a withdrawal charge as a percentage of purchase payments declining from 8% in years one, two, and three to 0% in year nine and thereafter, with a 10% "free withdrawal" amount; (ii) asset-based mortality and expense risks charges at the annual rates of 1.25% for Death Benefit Option I and 1.45% for Death Benefit Option II (1.25% during the income phase) assessed against the net assets of each sub-account; and (iii) an asset-based administrative expense charge at an annual rate of 0.15% for administration expenses (0.25% during the income phase, but currently not deducted) assessed against the net assets of each sub-account. Also, each year during the accumulation phase, a \$30 annual maintenance fee is deducted proportionately from each Investment Option. The annual maintenance fee will be waived if the Contract owner's account value is \$50,000 or greater on the date this fee is due. The underlying Funds impose investment management fees and charges for other expenses.

11. ALIAC will credit a premium bonus ("Bonus") under VA B Contracts to an owner's account whenever the owner makes an eligible purchase payment. The amount of the Bonus is a percentage of the eligible purchase payment. Withdrawals reduce on a dollar-for-dollar basis the eligibility of subsequent purchase payments to receive the Bonus. The Bonus percentage is based upon the sum of all purchase payments made, less

withdrawals ("net cumulative purchase payments"), as follows:

Net cumulative purchase payments	Bonus percentage
\$1,500 to \$14,999 .....	2.00
\$15,000 to \$2,499,999 .....	4.00
\$2,500,000 or more .....	5.00

An owner's initial purchase payment will be eligible for the Bonus at the rates shown above. The amount of a subsequent purchase payment eligible for a Bonus is the amount of net cumulative purchase payments minus the sum of purchase payments upon which a Bonus has previously been paid. No Bonus will be credited on amounts reinvested following a full withdrawal. In the future, ALIAC (or AICA) may credit Bonuses of up to 5% of eligible purchase payments under Future Contracts according to different purchase payment breakpoint schedules. ALIAC will allocate Bonuses among the Investment Options (defined below) in the same proportion as the corresponding purchase payments are allocated by the owner. ALIAC will fund Bonuses from its general account assets. The Bonuses are vested when applied, except under the following circumstances: (i) ALIAC will recapture all Bonuses if the owner returns a VA B Contract to ALIAC for a refund during the 10-day (or longer, if required) "free look" period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) the amount of any death benefit will not include any Bonus credited to an owner's account after or within 12 months of the date of death.

12. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Aetna to issue Contracts that permit Aetna to recapture (i) all Bonuses if the owner returns the Contract to Aetna for a refund during the 10-day (or longer, if required) "free look" period; (ii) any Bonus credited to an owner's account within 24 months of electing an income phase payment option so that such Bonuses will be forfeited and not included in an owner's account value when calculating the payment amount; and (iii) any Bonus credited to an owner's account after or within 12 months of the date of death so that the amount of any death benefit will not include such Bonuses.

### Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules 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. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions summarized above with respect to the VA B Contracts and any Future Contracts funded by VA B or Future Accounts, that are issued by Aetna and underwritten or distributed by ALIAC or any Aetna Broker-Dealers. Applicants undertake that Future Contracts funded by VA B or any Future Account, in the future, will be substantially similar in all material respects to the VA B Contracts. Applicants believe 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 Act.

2. Applicants represent that it is not administratively feasible to track the Bonus amount in the Accounts after the Bonus is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including the Bonus amount, during the period when the owner's interest in the Bonus is not completely vested. Therefore, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Bonus.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to

receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Bonus recapture provisions summarized herein would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Bonus allocated to his or her annuity account upon receipt of an initial purchase payment is not vested until the applicable free-look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in the amount of any Bonus allocated upon receipt of eligible purchase payments during the two years before the owner annuities or during the 12 months prior to the date of death also is not vested. Until or unless the amount of any Bonus is vested, Applicants submit that Aetna retains the right and interest in the Bonus amount, although not in any earnings attributable to that amount. Thus, Applicants argue that, when Aetna recaptures any Bonus, it is simply retrieving its own assets and, because an owner's interest in the Bonus is not vested, the owner has not been deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the owner's annuity account value (including the Bonus).

5. In addition, with respect to Bonus recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Bonus amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that, if Aetna could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of a Bonus relating to purchase payments made within two years of annuitization or within twelve months of death is designed to provide Aetna with a measure of protection against "anti-selection." Applicants state that the risk here is that, rather than spreading purchase payments over a number of years, an owner will make very large payments shortly before annuitizing, or death, thereby leaving Aetna less time to recover the cost of Bonus, to its financial detriment. Aetna intends to recover the cost of the Bonus through a portion of the early withdrawal charge and the mortality and expense risks charge imposed under the Contracts. Aetna may use any excess to recover distribution costs relating to

the Contracts and as a source of profit. The amounts recaptured equal the Bonuses provided by Aetna from its own general account assets, buy any gain would remain part of the Contract's value.

7. Applicants represent that the Bonus will be attractive to and in the interest of investors because it will permit owners to put an amount greater than their purchase payments (depending on the net cumulative purchase payments) of work for them in the selected Investment Options. Also, owners will retain any earnings attributable to the Bonus and, unless any of the contingencies summarized above apply, the principal amount of the Bonus.

8. Applicants submit that the provisions for recapture of any applicable Bonus under the VA B Contracts do not, and any such Future Contract provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Bonus under the circumstances described herein with respect to the Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computer after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, Aetna's recapture of the Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Bonus is not violative

of Section 22(c) and Rule 22c-1. Applicants argue that the recapture of the Bonus does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. See Adoption of Rule 22c-1 under the Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Bonus, Aetna will redeem interest in an owner's annuity account at a price determined on the basis of the current net asset value of the respective Accounts. The amount recaptured will equal the amount of the Bonus that Aetna paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, no dilution will occur upon the recapture of the Bonus. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Bonus under the Contracts.

#### *Conclusion:*

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-33348 Filed 12-22-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24205; File No. 812-11708]

### Hartford Life and Annuity Insurance Company, et al.; Notice of Application

December 17, 1999.

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

**ACTION:** Notice of application for an order pursuant to section 26(b) and 17(b) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain unit investment trusts to substitute shares of Evergreen Variable Annuity Trust's ("Evergreen Trust") Evergreen VA Capital Growth Fund for shares of Mentor Variable Investment Portfolios' ("Mentor Trust") Mentor VIP Capital Growth Portfolio, shares of Evergreen Trust's Evergreen VA Growth Fund for shares of Mentor Trust's Mentor VIP Growth Portfolio, shares of Evergreen Trust's Evergreen VA High Income Fund for shares of Mentor Trust's Mentor VIP High Income Portfolio and shares of Evergreen Trust's Evergreen VA Perpetual International Fund for shares of Mentor Trust's Mentor VIP Perpetual International Portfolio currently held by those unit investment trusts to support certain deferred premium variable annuity contracts ("Contracts"). Applicants also request an order exempting them from Section 17(a) of the Act to the extent necessary to permit certain in-kind redemption and purchase transactions in connection with the substitutions.

**APPLICANTS:** Hartford Life and Annuity Insurance Company ("Hartford Life and Annuity"), Hartford Life and Annuity Insurance Company Separate Account One ("Hartford Life and Annuity Account"), Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company Separate Account Two ("Hartford Life Account"), PFL Life Insurance Company ("PPL") and PFL Retirement Builder Variable Annuity Account ("PFL Account", and together with Hartford Life and Annuity Account and Hartford Life Account, the "Accounts"), Mentor Variable Investment Portfolios and Evergreen Variable Annuity Trust.

**FILING DATE:** The application was filed on July 23, 1999 and amended on December 9, 1999.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on the application by writing to

the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2000, 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: Marianne O'Doherty, Counsel, Hartford Life and Annuity Insurance Company, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089; Frank A. Camp, PFL Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499; Michael H. Koonce, Mentor Variable Investment Portfolios, Evergreen Variable Annuity Trust, 200 Berkeley Street, Boston, Massachusetts 02116. Copies to Robert N. Hickey, Sullivan & Worcester LL, 1025 Connecticut Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20542-0102 (tel. (202) 942-8090).

#### Applicants' Representations

1. Hartford Life and Annuity is a stock life insurance company incorporated in Connecticut. Hartford Life and Annuity is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states except New York. Hartford Life and Annuity is the depositor and sponsor of the Hartford Life and Annuity Account. Hartford Life and Annuity is ultimately controlled by Hartford Financial Services Group, Inc.

2. Hartford Life is a stock life insurance company incorporated in Connecticut. Hartford Life is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states. Hartford Life is the depositor