Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: November 24, 1998.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23545; File No. 812–11196]

Aetna Variable Fund, et al.; Notice of Application

November 23, 1998.

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

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of any current or future series of each Fund and shares of any other investment company that is offered as a funding medium for insurance products and for which ALIAC, Aeltus, or any of their affiliates, may now or in the future serve as investment adviser, principal underwriter or administrator (each Fund and such other investment companies referred to collectively as the ''Funds'') to be offered and sold to, and held by (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), (2) qualified pension and retirement plans held outside of the separate account context (''Qualified Plans'' or ''Plans''), and (3) the investment adviser of any Fund or any of the Adviser's affiliates (the ''Adviser'' and collectively, the ''Advisers'').

APPLICANTS: Aetna Variable Fund, Aetna Income Shares, Aetna Variable Encore Fund, Aetna Balanced VP, Inc., Aetna Generation Portfolios, Inc., Aetna Variable Portfolios, Inc., Aetna Get Fund, Portfolio Partners, Inc., Aetna Life Insurance and Annuity Company (''ALIAC'') and Aeltus Investment Management, Inc. (''Aeltus'') (collectively, the ''Applicants'').

FILING DATE: The application was originally filed on June 25, 1998, and an amended and restated application was filed on November 20, 1998.

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 SEC 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 December 18, 1998, 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 of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Amy R. Doberman, Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156–8962.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Special Counsel, 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 is available for a fee from the Public Reference Branch of the SEC, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Each Fund is an open-end management investment company. Aetna Variable Fund, Aetna Income Shares, Aetna Variable Encore Fund, and Aetna Get Fund are each organized as a Massachusetts business trust. Aetna Balanced V.P., Inc., Aetna Generation Portfolios, Inc., Aetna Variable Portfolios, Inc., and Portfolio Partners, Inc., are each organized as a Maryland Corporation. Certain of the Funds issue shares in multiple series. Additional series of these Funds may be established in the future.

2. ALIAC, a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the investment adviser and administrator for Portfolio Partners, Inc., and as the principal underwriter for each Fund. Aeltus, which is registered with the Commission as an investment adviser, serves as the investment adviser and administrator for each Fund other than Portfolio Partners, Inc. ALIAC and Aeltus are both indirect wholly-owned subsidiaries of Aetna Inc.

3. Shares of each Fund are currently offered to separate accounts of ALIAC and its affiliates to serve as the investment medium for variable annuity contracts and variable life insurance policies issued by ALIAC and its affiliates. The Funds also may in the future offer shares of their existing and future series to separate accounts of other insurance companies, including insurance companies that are not affiliated with ALIAC, to serve as the investment vehicle for various types of insurance products, which may include, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, ''Variable Contracts''). Insurance companies whose separate account or accounts may in the future own shares of the Funds are referred to herein as ''Participating Insurance Companies.''

4. Each Fund may offer its shares directly to Qualified Plans described in Treasury Regulation § 1.817–5(f)(3)(iii). Fund shares sold to Qualified Plans would be held by the trustee(s) of the Plan. No Adviser will act as investment adviser to any Qualified Plan which purchases shares of a Fund advised by that investment adviser, unless permitted under the Employment Retirement Income Security Act (''ERISA'').

5. Shares of each Fund may also be offered to an Adviser or any of its affiliates for purposes of providing necessary capital required by Section 14(a) of the 1940 Act. Any shares in a Fund purchased by an Adviser or its affiliate will be automatically redeemed if and when the Adviser's investment advisory agreement with that Fund terminates.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting the Applicants and the Participating Insurance Companies and their separate accounts (and, to the extent necessary, any investment adviser, principal underwriter, sponsor, or depositor for such accounts) from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) thereof, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of each Fund to be offered and sold to, and held by

(1) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (2) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) (''shared funding''); (3) Qualified Plans; and (4) any Adviser or its affiliates.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or an affiliated life insurance company. The relief granted by Rule 6e–2(b)(15) also is not available if the variable life insurance separate account owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies, Qualified Plans, and Advisers or their affiliates.

3. In connection with the funding of 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. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offers their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the underlying fund is engaged in shared funding or sells its shares to Qualified Plans or Advisers and their affiliates.

4. Applicants state that the current tax law permits the Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of separate accounts funding variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not adequately diversified as prescribed by the Treasury Department. To meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations contain certain exceptions to this requirements, however, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life insurance contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same underlying investment company to separate accounts and to Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their separate accounts (and Investment advisers, principal underwriters, and sponsors or depositors of such separate accounts) investing in any of the Funds.

7. Section 6(c) of the 1940 Act authorizes the Commission, to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. 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.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to 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). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Sections 9. Applicants assert that it is not necessary for the protection of investors of the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies managed, administered, or invested in by that organization. Applicants also assert that it is unnecessary to apply the restrictions of Section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as the funding medium for variable contracts.

10. Applications maintain that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding and sales to Qualified Plans. Applicants do not expect the Participating Insurance Companies and Qualified Plans to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use the Funds. The increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. In addition, since the Plans are not investment companies and will not be deemed affiliated by virtue of

their shareholdings, no additional relief is required with respect to Qualified Plans.

11. Applicants further state that no regulatory purpose is served by extending the Section 9(a) monitoring requirements in the context of the Funds selling shares to an Adviser or its affiliate. Rules 6e–2 and 6e–3(T) provide relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of Participating Insurance Companies or their affiliates. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or employees of the Adviser or an affiliate who participate in the management or administration of the Fund. Applicants maintain that the monitoring requirement should not extend to all officers, directors, and employees of the Participating Insurance Companies and their affiliates simply because the Funds sell certain shares to an Adviser or its affiliate. This monitoring would not benefit contract owners and Plan participants and would only increase costs, thereby reducing net rates of return.

Pass-Through Voting

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a ''pass-through voting' requirement with respect to management investment company shares held by a separate account. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority, subject to certain conditions. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that an insurance company may disregard voting instructions of contract owners in favor of any change in the investment company's investment policies, principal underwriter or investment adviser, provided that such disregard of voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

13. Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts; and is subject to extensive state regulations. applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants state that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, the corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same factors.

14. Applicants further represent that the offer and sale of the fund shares to Qualified Plans and Advisers and their affiliates will not have any impact on the relief requested in this regard. Shares of the funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. In this respect, the voting rights to be exercised by the qualified Plans will be no different than the exercise of voting rights with respect to ''retail'' mutual funds that are available to the public. Similarly, the exercise of voting rights by Advisers and their affiliates do not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans or Advisers and their affiliates.

Conflicts of Interest

15. Applicants state that the prohibitions on mixed and shared funding may reflect some concern with possible divergent interests among different classes of investors. Applicants submit that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, the Applicants submit that the fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants submit that shared funding by unaffiliated Participating Insurance Companies, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(15) permit. Affiliated Participating Insurance Companies may be domiciled in different states and be subject to differing state law requirements. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice are designed to safeguard against, and provide procedures for resolving, and adverse effects that differences among state regulatory requirements may produce.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) give the insurance company the right to disregard the voting instructions of the contract owners. This right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Affiliation does not eliminate the potential for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specified good faith determinations.

18. A particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

19. Applicants believe that it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans. Applicants represent that the transfer agent for the Funds will inform each

shareholder including each variable contract and each Qualified Plan, of its respective share of ownership in the respective Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

20. Applicants submit that investment by the Plans in any of the Portfolios will present no conflict. Applicants assert that the likelihood that voting instructions of insurance company separate account holders will be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure to any Qualified Plan choosing to invest in a Fund. Moreover, Applicants state that even if a material irreconcilable conflict involving Qualified Plans arises, the Plans may simply redeem their shares and make alternative investments.

21. Applicants submit that investments by the Adviser or an affiliate will similarly present no conflict. Applicants state that each Adviser or its affiliate, as applicable, will agree to vote its shares of Fund in the same proportion as all contract owners having voting rights with respect to that fund for in such other manner as may be required by the Commission or its staff.

22. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if such Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. Moreover, Applicants submit that each Fund will be managed to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. Applicants note that the success of all variable insurance products depends, in part, on satisfactory investment performance, which provides an incentive for the participating insurance company to seek optimal investment performance.

23. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers.

24. Applicants submit that permitting mixed and shared funding will provide economic justification for the growth of the Funds. In addition, permitting mixed and shared funding will facilitate the establishment of additional series of Funds serving diverse goals, since a broader base of contract owners can be expected to provide economic justification for the creation of additional Funds with a greater variety of investment objectives and policies.

25. Applicants further note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii) specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

26. Applicants note that while there are differences in the manner in which distribution for variable annuity contracts, variable life insurance contracts and Qualified Plans are taxed, these differences do not raise any conflicts of interest. When distributions are to be made, and a separate account or Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan, and the insurance company will make distributions in accordance with the terms of the variable contract.

27. Applicants submit that the ability of the Funds to sell their shares directly to Qualified Plans and Advisers and their affiliates does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan or an Adviser or its affiliate. Regardless of the rights and benefits of participants under the Plans, or contract owners under their variable contracts, the Plans, Advisers and their affiliates, and the separate accounts have rights only with respect to their respective shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

28. Finally, Applicants state that there are no conflicts between contract owners and the participants under Plans with respect to the state insurance commissioner's powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Complex and time-consuming transactions must be undertaken to accomplish such redemption and transfers. Conversely, trustees of Plans may redeem shares from a Fund, and reinvest in another funding vehicle without the same regulatory impediments; most Plans may even hold cash pending suitable investment. Based on the foregoing, Applicants represent that should issues arise where the interests of variable contract owners and the interests of Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Fund.

29. Applicants submit that mixed and shared funding should provide benefits to contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise available through the Funds, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible. Additionally, making the Funds available for mixed and shared funding and permitting the purchase of Fund shares by Qualified Plans may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

30. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Qualified

Plans and an Adviser or its affiliates. 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. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans or an Adviser or its affiliates will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

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

2. Each Board will monitor the Fund for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all separate accounts and of Plan participants investing in the Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable 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 pubic ruling, private letter ruling, no-action or interpretive letter, 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 Fund or series are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and Plan trustees; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Participating Insurance Companies, the Adviser or an affiliate, and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Participants and the Adviser 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 contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund 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 contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board of the Fund, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies, and Qualified Plans, shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) withdrawing the assets allocable to some or all the separate accounts from the relevant Fund or any series therein and reinvesting such assets in a different investment medium (including another series, if any, of such Fund); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (iii) 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 contract owner 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. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its 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 and Qualified Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners and, as applicable, Plan participants.

For purposes of Condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser 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 so has been declined by a vote of a majority of contract owners materially and adversely affected by the material irreconcilable. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be

made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from such contract owners. Each Participating Insurance Company will vote shares of each Fund or series held in its registered 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. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote a Fund's shares and to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges for contract owners whose contracts are funded through a registered separate account, the Adviser, or, if applicable, any of its affiliates, will vote shares of any Fund or series thereof in the same proportion as all variable contract owners having voting rights with respect to that Fund or series thereof; provided, however, that the Adviser or any such affiliates shall vote its shares in such other manner as may be required by the Commission or its staff.

8. A 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 shall disclose in its prospectus that (1) shares of the Fund are offered to insurance company separate accounts which fund both annuity and life insurance contracts, and to Qualified Plans, (2) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund might at some time be in conflict, and (3) the Board will monitor the Fund for any material conflicts and determine what action, if any should be taken.

9. 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 Participants 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.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act 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 and shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Fund and/or the Participants, as appropriate, 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.

11. Each 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 each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16(c) of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 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 (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. The Participants shall at least annually submit to the Board of a Fund 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, material and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of a Participant (not including an Adviser or affiliate) to provide these reports, materials, and data to the Board of the Fund when it so reasonably requests, shall be a contractual obligation of all Participants under their agreements governing participation in each Fund.

13. If a Qualified Plan should become an owner of 10% or more of the assets of a Fund, such Plan will execute a participation agreement with such Fund which includes the conditions set forth in the application to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons summarized 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. 98–31891 Filed 11–30–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23571; 812–10868]

Baker, Fentress & Company, et al; Notice of Application

November 24, 1998.

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

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from section 17(a) of the Act; under section 6(c) granting an exemption from sections 18(d) and 23(a) and (b) of the Act, under section 23(c) of the Act granting an exemption from section 23(c) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Baker, Fentress & Company (''BKF'') and Levin Management Co., Inc. (''Levco,'' together with BKF, ''applicants'') request an order to permit applicants to adopt an equity-based employee compensation plan.

FILING DATES: The application was filed on November 12, 1997 and amended on September 28, 1998.