

advantages, and the Issuer no longer sees the value of the additional market place. The Issuer states that the Securities have traded on the New York Stock Exchange, Inc. since November 1995.

The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the CHX and from registration under Section 12(b) of the Act<sup>3</sup> and shall not affect its obligation to be registered under Section 12(g) of the Act.<sup>4</sup>

Any interested person may, on or before February 7, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25889; File No. 812-12845]

### American United Life Insurance Company, et al.; Notice of Application

January 16, 2002.

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

**ACTION:** Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940, as amended ("1940 Act"), providing exemptions from sections 2(a)(32), and 27(i)(2)(A) of the 1940 Act and rule 22c-1 thereunder to the extent necessary to permit the recapture of certain bonus credits.

*Applicants:* American United Life Insurance Company ("AUL"), AUL American Individual Variable Annuity Unit Trust (the "Separate Account"), and OneAmerica Securities, Inc. (the

"Distributor"), collectively the "Applicants."

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to Section 6(c) of the 1940 Act exempting them, to the extent deemed necessary, from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder, to permit AUL to recapture part or all of a credit applied to premium payments made within the first twelve months after a Contract is issued, in the following instances: (i) When a Contract owner exercises the Contract's free look provision; and (ii) when a Contract owner makes any withdrawal from a Contract within the first seven Contract years. Applicants request that the order extend to other variable annuity contracts that are substantially similar in all material respects to the Contracts that AUL, its affiliates and successors in interest may issue in the future.

**FILING DATE:** The application was filed on June 28, 2002, and amended and restated on November 8, 2002, December 26, 2002 and January 16, 2003.

**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 Commission by 5:30 p.m. on February 10, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o John C. Swhear, Esq., American United Life Insurance Company, One American Square, Indianapolis, Indiana 46282. Copies to: Ethan D. Corey, Esq., Dechert, 1775 Eye Street, NW., Washington, DC 20006-2401.

**FOR FURTHER INFORMATION CONTACT:** Patrick F. Scott, Attorney, or Lorna J. MacLeod, 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 20549 (202) 942-8090.

### Applicants' Representations

1. AUL is an Indiana stock insurance company. AUL is the depositor and sponsor of the Separate Account, a separate account established under Indiana law.

2. The Separate Account is registered with the Commission under the 1940 Act as a unit investment trust. AUL owns the assets of the Separate Account that supports obligations under certain individual variable annuity contracts (the "Contracts"). The Separate Account is currently divided into sub-accounts referred to as Investment Accounts. Each Investment Account invests exclusively in shares of one of the underlying open-end management investment companies, or series thereof, available as investment options under the Contracts. Premiums may be allocated to one or more Investment Accounts available under a Contract. AUL may in the future establish additional Investment Accounts of the Separate Account, which may invest in other securities, mutual funds, or investment vehicles.

3. The individual variable annuity contracts, which are issued by AUL through the Distributor, are unbundled. That is, there is a base contract, with a standard death benefit, and annuity payout options, as well as transfer privileges and dollar cost averaging. Other features under the contract include several optional benefit riders that may be added at the time the Contract is issued for an additional asset-based fee. The Contract has the following charges: (i) A deferred sales charge as a percentage of contributions withdrawn as described above; (ii) an administrative expense fee equal to 0.15% of average Variable Account value on an annual basis; (iii) an annual Contract fee of \$50 for contracts with Account Values less than \$20,000; \$30 for contracts with Account Values \$20,000 or greater, but less than \$50,000; and \$0 for contracts with Account Values \$50,000 or greater; (iv) a mortality and expense risk charge equal to 1.15% of average Variable Account value on an annual basis; and (v) any applicable charge for each of the selected riders, described in the Application. Contract owners in certain states may also be required to pay any applicable state premium tax. In addition, assets invested in the Investment Accounts are charged with the annual operating expenses of the underlying Funds.

<sup>3</sup> 15 U.S.C. 78j(b).

<sup>4</sup> 15 U.S.C. 78j(g).

<sup>5</sup> 17 CFR 200.30-3(a)(1).

4. Premiums under the Contracts may vary in amount and frequency, subject to certain limitations. The Contracts also provide for the accumulation of values either on a variable basis, a fixed basis, or both, as well as several options for fixed and variable annuity payments to begin on a future date. Premium payments under the Contracts may be made at any time during the Contract owner's life and before the Contract's annuity date. The Contract owner has the right to return the Contract for any reason within the "free look" period, which is a ten-day period beginning when the Contract owner receives the Contract. If a particular state requires a longer free look period, then eligible Contract owners in that state will be allowed the longer statutory period to

return the Contract. The returned Contract will be deemed void and AUL will refund the Account Value, which is the total sum of a Contract owner's interest in the Variable Account and the Fixed Account(s). Initially, the Account Value is equal to the initial premium less any applicable premium tax and thereafter reflects the net result of premiums, investment experience, charges deducted, and any withdrawals taken.

5. The optional Extra Credit Premium Rider offers a credit of 3%, 5% or 6% of the total first year premium payments (the "Credit"). The Contract owner may select the 3% Credit rider only when the Six Year Contract Withdrawal Charge Rider is selected. If a Contract owner selects the Extra Credit Premium Rider

at the time of application, AUL will credit an extra amount to the Contract each time the Contract owner makes a premium payment within the first twelve months after the Contract is issued. AUL will allocate Credit amounts pro rata among the Investment Accounts in the same ratio as the premium payment to which the Credit relates. AUL will fund the Credit amounts from its general account assets.

The annual charge for the Credit Rider will be initially set at 0.55%, 0.65% and 0.75%, of average Account Value, respectively, for the 3%, 5% and 6% Credit amounts. This rider charge will apply until the Credit is totally vested, according to the following vesting schedule:

| Contract year | 3% credit (percent) | 5% credit (percent) | 6% credit (percent) |
|---------------|---------------------|---------------------|---------------------|
| 1             | 0                   | 0                   | 0                   |
| 2             | 0                   | 0                   | 4.167               |
| 3             | 25                  | 16.67               | 16.67               |
| 4             | 50                  | 33.33               | 33.33               |
| 5             | 75                  | 50                  | 50                  |
| 6             | 100                 | 66.67               | 66.67               |
| 7             | 100                 | 83.33               | 83.33               |
| 8             | 100                 | 100                 | 100                 |

AUL will discontinue the charge for the Extra Credit Premium Rider at the end of the fifth contract year for the 3% Extra Credit Premium Rider and at the end of the seventh contract year for the 5% and 6% Extra Credit Premium Riders.

6. If a Contract owner exercises the free look right, his or her Account Value will be adjusted to reflect the recapture of non-vested Credit amounts paid on the Contract, consistent with the vesting schedule above. However, any earnings or loss on the non-vested Credit will be fully vested and considered part of the Account Value. AUL will refund the premium paid in those states where required by law and for individual retirement annuities. In all other cases, the Contract owner bears the investment risk during the period prior to AUL's receipt of request for cancellation. In addition, all or part of the Credit may be recaptured by AUL if the Contract owner makes a withdrawal in the first seven contract years, depending upon the vesting schedule above. Regardless of whether or not the Credit is vested, all gains or losses attributable to the Credit are part of the Contract owner's Contract value and are immediately vested.

7. During the lifetime of the annuitant, at any time before the annuity date and subject to the

limitations under any applicable qualified plan and applicable law, a Contract owner may surrender a Contract or take a withdrawal from a Contract. A withdrawal may be requested for a specified percentage or dollar amount of a Contract owner's Account Value. Upon payment, the Contract owner's Account Value will be reduced by an amount equal to the payment, any applicable withdrawal charge, calculated as a percentage of first year premium, and any recapture of non-vested Credit amounts consistent with the vesting schedule above. The withdrawal charge is based on the following schedule:

| Contract year | Withdrawal charge percentage |
|---------------|------------------------------|
| 1             | 7                            |
| 2             | 6                            |
| 3             | 5                            |
| 4             | 4                            |
| 5             | 3                            |
| 6             | 2                            |
| 7             | 1                            |
| 8             | 0                            |

An amount withdrawn during a Contract year, referred to as the "free withdrawal amount," will not be subject to an otherwise applicable withdrawal charge. The free withdrawal amount is 12% of Account Value, including any

vested and non-vested Credit amounts, at the beginning of the Contract year in which the withdrawal is being made.

8. Applicants state that if a contract owner has not chosen an Extra Credit Premium Rider, AUL will first provide a 12% free withdrawal amount, which is calculated based on the Account Value at the most recent contract anniversary. Any amounts withdrawn in excess of the free withdrawal amount will be assessed a withdrawal charge based on the table above. The withdrawal charge is calculated as a percentage of first year premium not previously withdrawn. After the withdrawal, the first year premium amount upon which a withdrawal charge may be assessed in the future is reduced by the total amount of the withdrawal, which includes the free withdrawal amount.

9. Applicants further state that, if a contract owner has chosen an Extra Credit Premium Rider, AUL will first provide a 12% free withdrawal amount. Next, any amounts withdrawn in excess of the free withdrawal amount will be subject to a recapture of non-vested Credit amounts (see vesting schedule in paragraph 5 above, explaining the "Extra Credit Premium Rider") and assessed a withdrawal charge as described above. The credit will be

recaptured in proportion to the amount in excess of the free withdrawal amount.

After the withdrawal, the first year premium amount from which non-vested Credit amounts may be recaptured and upon which a withdrawal charge may be assessed in the future, is reduced by the total amount of the withdrawal, which includes the free withdrawal amount. In other words, while a withdrawal charge will be assessed and credit recaptured only on the amount in excess of the free withdrawal amount, the premium upon which future recaptures and withdrawals may be assessed is reduced by the total amount of the withdrawal. Once the remaining premium is reduced to zero, no further withdrawal charges may be assessed and no further credits may be recaptured, since withdrawal charges and recaptures are based on first year premium, and the first year premium has been exhausted.

10. The Six Year Contract Withdrawal Charge Rider will reduce the withdrawal charge period by two years. The final two years of the withdrawal charge will be dropped, and the withdrawal charges assessed during the previous years are consistent with the Withdrawal Charge schedule listed above. The annual charge for this rider will be initially set at 0.30% of average Value. The 3% optional Extra Credit Premium Rider must be selected with the Six Year Contract Withdrawal Charge Rider. No other Extra Credit Premium Rider is available with this rider.

11. The Long Term Care Facility and Terminal Illness Rider provides a waiver of both withdrawal charges and recapture of Credits if the Extra Premium Rider is selected, on withdrawals that qualify under the Rider. Therefore, under the rider, if a Contract owner is confined for a continuous 90-day period to a long-term care facility or for a 30-day period to a hospital, as defined by the rider provisions, Withdrawal charges will not apply and Credits will not be recaptured, if the Extra Credit Premium Rider is selected. In addition, if the Contract owner has been diagnosed by a physician to have a terminal illness, as defined by the rider, and AUL has received a physician's letter at its home office, no withdrawal charges will be deducted upon withdrawal, and no Credits will be recaptured, if the Extra Credit Premium Rider is chosen. The charge for this benefit is included in the base mortality and expense risk charge.

#### Applicants' Legal Analysis

1. Section 27(i) of the 1940 Act was added to the Act to implement the

purpose of the National Securities Markets Improvement Act of 1996. Section 27(i)(2)(A) of the 1940 Act provides that it shall be unlawful for a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless 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 or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

2. Applicants assert that the recapture of the Credit in the circumstances set forth in this application would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year. Until the right to recapture has expired and any Credit amount is vested, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, Applicants assert, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

3. Applicants additionally represent that permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. Furthermore, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against anti-selection. The risk here is that, rather than spreading contributions over a number of years, a Contract owner might make very large contributions during the first Contract year, the Credits vest, the Contract owner then returns the Contract and is permitted to keep the Credit amounts, thereby leaving AUL little time to recover the cost of the Credits.

4. For the foregoing reasons, Applicants submit that the provisions for recapture of Credits under the Contracts and other variable annuity contracts that are substantially similar in all material respects to the contracts described in the application, that AUL, its affiliates and successors in interest

may issue in the future ("Future Contracts"), do not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act because the recapture would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets.

5. Applicants further assert that a Contract owner's interest in the Credit allocated to his or her Contract value upon receipt of a contribution is not fully vested until the eighth contract year, when the right to recapture has expired and any Credit amount has vested. Until that time, Applicants state, AUL retains the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when AUL recaptures any Credit, it is merely retrieving its own assets, and the Contract owner has not been deprived of a proportionate share of the applicable Separate Account's assets because his or her interest in the Credit has not vested.

6. In addition Applicants state, permitting a Contract owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. On the other hand, Applicants assert, the recapture of the full amount of Credits applied to premium payments made within the first twelve months after issuance is designed to provide AUL with a measure of protection against such anti-selection.

7. Applicants submit that the application of a Credit to premium payments made under the Contracts should not raise any questions as to AUL's compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from Section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in this application without the loss of relief from Section 27 provided by Section 27(i).

8. Rule 22c-1, promulgated under Section 22(c) of the 1940 Act, prohibits a registered investment company issuing any redeemable 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 computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 22c-1 is intended to avoid the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price

below net asset value or repurchase at a price above it, and other unfair results, including speculative trading practices.

9. The proposed recapture of the Credit, Applicants assert, does not pose such a threat of dilution, nor does it promote speculative trading practices, calculated to take advantage of backward pricing, the two evils that Rule 22c-1 was intended to eliminate or reduce. To effect a recapture of a Credit, AUL will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the Investment Account(s) to which the Contract owner's Contract value is allocated. The amount recaptured will equal the amount of the Credit paid out of AUL's general account assets. Although the Contract owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable Investment Accounts. Thus, Applicants assert, no dilution will occur upon the recapture of the Credit.

10. Applicants argue that because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Credit, Rule 22c-1 should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provision of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

11. Applicants submit that their request for an order that applies to the Separate Account and any Future Accounts established by AUL, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants further submit that Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Additionally, Applicants state that requiring Applicants to file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this

application, investors would not receive any benefit or additional protection thereby. Applicants undertake that Future Contracts funded by the Separate Accounts or by Future Accounts, which seek to rely on the order issued pursuant to this Application, will be substantially similar to the Contracts in all material aspects.

### Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provisions of the Act, or any rule or regulation thereunder, 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 submit, for the reasons stated herein, that their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1453 Filed 1-22-03; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47182; File No. SR-GSCC-2002-06]

### Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Imposition of a Fee on Members That Fail To Submit Transaction Data in an Interactive and Timely Manner

January 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 12, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will adjust the trade comparison fees for GSCC members that use GSCC's real time trade matching ("RTTM") process but do not submit trade data on an interactive and timely basis.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its inception in December 2000, GSCC's RTTM service has grown to encompass an increasing portion of trades that are submitted to GSCC. The expansion of the use of RTTM for government securities, its introduction for mortgage backed securities products (which is scheduled for September 2002), and ultimately its use for other fixed-income products remains GSCC's most significant initiative.

In order to encourage members to shift to interactive processing, GSCC imposed, effective July 1, 2001, a five-cent per side comparison surcharge for non-interactive members.<sup>3</sup> The imposition of this financial incentive and the growing use of interactive messaging in connection with the RTTM service have not, however, ensured that members are submitting transaction data promptly after trade execution.

In order to ensure that members not only participate in the RTTM process but also submit transaction data on a timely basis and in order to cover the cost of batch processing, GSCC is imposing the following new fees (which fees are *in addition* to the normal 50-cent per side comparison fee and *in lieu* of the current five cent per side surcharge):

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> A transaction is considered non-interactive if it is submitted more than one hour after its execution.

<sup>1</sup> 15 U.S.C. 78s(b)(1).