

Filing Date: The application was filed on March 2, 2000.

Applicant's Address: 111 Center Street, Little Rock, Arkansas 72201.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Security Benefit Life Insurance Company, et al.

April 28, 2000.

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 ("1940 Act"), as amended granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit the recapture of credit enhancements applied to the contract value of certain flexible premium deferred variable annuity contracts.

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act, to permit, under specified circumstances, the recapture of certain credit enhancements ("Credit Enhancements") applied to: (i) The Variflex Extra Credit contract ("Variflex Credit" or "Contract"), a flexible premium deferred variable annuity contract that Security Benefit issues through the Variflex Account; and (ii) other variable contracts and future variable contracts offered by the SBL Insurers and funded by the Separate Accounts or a Future Account ("Future Variable Contracts"), provided that the Future Variable Contract is substantially similar in all material respects to the Contract.

Applicants: Security Benefit Life Insurance Company ("Security Benefit"); First Security Benefit Life Insurance and Annuity Company of New York ("First Security Benefit"); SBL Variable Annuity Account VIII (Variflex Extra Credit) ("Variflex Account," and, together with any other separate account of Security Benefit or First Security Benefit supporting variable annuity contracts, collectively referred to as the "Separate Accounts"); any other separate account that will be established in the future by Security Benefit or First Security Benefit to

support variable annuity contracts ("Future Accounts") issued by Security Benefit or First Security Benefit (collectively, the "SBL Insurers"); and Security Distributors, Inc. ("SDI"), (collectively referred to herein as "Applicants").

Filing Dates: The Application was filed with the Commission on January 27, 2000, and amended and restated on March 22, 2000 and April 27, 2000.

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 Commission's Secretary 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 May 23, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Applicants, c/o Amy J. Lee, Esq., Associate General Counsel, Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, KS 66636-0001.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Attorney, 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 SEC, 450 Fifth Street NW Washington, DC 20549-0102 (tel. (202) 942-8090).

Applicant's Representations

1. Security Benefit is a stock life insurance company organized under the laws of the state of Kansas. Security Benefit offers life insurance policies and annuity contracts, as well as financial and retirement services. It is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Together with its subsidiaries, Security Benefit has total funds under management of approximately \$8 billion.

2. First Security Benefit is a stock life insurance company organized under the

laws of the State of New York. First Security Benefit offers variable annuity contracts in New York and is admitted to do business in that state. First Benefit is a wholly-owned subsidiary of Security Benefit Group, Inc. ("Security Benefit Group"), a financial services holding company which is wholly-owned by Security Benefit.

3. Variflex Account was established on September 12, 1994 as a segregated asset account of Security Benefit and is registered with the Commission as a unit investment trust (File No. 811-8836). Security Benefit is the legal owner of the assets in Variflex Account. Variflex Account currently has 17 subaccounts. Each subaccount invests exclusively in shares of a specific series of the SBL Fund, an open-end management investment company for which Security Management Company, LLC, a wholly-owned subsidiary of Security Benefit, serves as investment adviser. Variflex Account funds the variable benefits available under Variflex Credit. Security Benefit has filed a registration statement on Form N-4 under the 1940 Act and the Securities Act of 1933, as amended (the "1993 Act") to register interests in the Variflex Account under Variflex Credit (File No. 333-93947).

4. SDI, an affiliate of Security Benefit, serves as the principal underwriter for the Variable Contracts issued by Security Benefit, including Variflex Credit. SDI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD. SDI is a wholly-owned subsidiary of Security Benefit Group.

5. Variflex Credit is a flexible premium deferred variable annuity contract. Variflex Credit may be purchased as a non-tax qualified retirement plan for an individual, or on an individual basis, in connection with a retirement plan qualified under sections 403(b), 408, or 408A, of the Internal Revenue Code of 1986, as amended.

6. Variflex Credit offers a "Credit Enhancement" feature under which Security Benefit may add an amount to each contractholder's "Contract Value"¹ at the time of any purchase payment. Credit Enhancements are allocated among the subaccounts in the same proportion that the applicable purchase payment is allocated. The amount of any Credit Enhancement is based on the total purchase payments made into

¹ The term "Contract Value" refers to the total value of the Contract which includes amounts allocated to the Subaccounts and the Fixed Account as well as any amount set aside in the loan account to secure loans.

Variflex Credit less total withdrawals, including any withdrawal changes, from the Contract as of the date the purchase payment is applied. The percentage amounts are set forth in the table below:

| Total purchase payments, less withdrawals and withdrawal charges | Credit enhancement (in percent) |
|--|---------------------------------|
| Less than \$10,000 | 0 |
| At least \$10,000 but no more than \$1,000,000 | 4 |
| \$1,000,000 or more | 5 |

7. The Variflex Credit provides for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among investment options.

8. The Variable Contracts issued by the SBL Insurers permit contractholders to cancel their Variable Contracts and to receive a refund during the Free-Look Period.

9. In most instances, a contractholder who returns the Variable Contract during the Free-Look Period will receive a refund of Contract Value plus any charges deducted from such Contract Value, minus the value of any Credit Enhancement.² Contractholders also receive a refund of any amounts that may have been deducted for state premium taxes and/or other taxes. The value of the Credit Enhancement, not the amount originally credited, is deducted if the Variable Contract is canceled using the Free-Look Period.

10. Variflex Credit provides for a death benefit upon the death of the contractholder prior to the annuity start date. The death benefit proceeds will be the death benefit reduced by any unpaid loan balance including loan interest ("Contract Debt"), any pro rata account charge and any uncollected premium tax. If a contractholder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (i) The sum of all purchase payments (not including Credit Enhancements), less any reductions caused by previous withdrawals; or (ii) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit less any Credit Enhancements applied during the 12 months prior to the date of the contractholder's death.

11. Variflex Credit provides for withdrawal charge waivers upon a full or partial withdrawal in the event of confinement to a hospital or nursing facility or diagnosis of a terminal illness

("Eligible Withdrawal"). In the event of an Eligible Withdrawal, the contractholder would forfeit all or part of any Credit Enhancement applied during the 12 months preceding the withdrawal. The amount of Credit Enhancements to be forfeited is a percentage determined by dividing the amount of the Eligible Withdrawal by the total purchase payments made in the 12 months preceding that Eligible Withdrawal. For example, a withdrawal of \$50,000 relative to \$100,000 in purchase payments in the 12 months preceding the withdrawal would result in forfeiture of 50% of the Credit Enhancements applied during that 12 month period.

12. Applicants seek relief to: (1) Deduct from the death benefit the amount of any Credit Enhancement applied 12 months prior to the date of the contractholder's death; and (ii) deduct from an Eligible Withdrawal the amount of any Credit Enhancement applied 12 months before an Eligible Withdrawal. The requested relief would also apply to Future Variable Contracts that are substantially similar in all material respects to the Contracts.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 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 1940 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 provisions of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants seek exemptive relief pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 27c-1 thereunder, to the extent necessary to permit the SBL Insurers to recapture: (1) The amount of any Credit Enhancement applied 12 months prior to the date of the contractholder's death from the amount of any death benefit; and (ii) the amount of any Credit Enhancement applied 12 months before an Eligible Withdrawal from the amount of that Eligible Withdrawal.

3. Subsection (i) of Section 27 of the 1940 Act 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 separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such separate

account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is redeemable security.

4. Section 2(a)(32) of the 1940 Act 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 shares of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants state that a beneficiary's or contractholder's interest in the amount of a Credit Enhancement allocated to Contract Value is not vested until 12 months after the Credit Enhancement has been applied to the Variable Contract. Unless and until the beneficiary's and contractholder's interests in the amount of the Credit Enhancement have vested (i.e., 12 months after it has been applied to the Variable Contract), Security Benefit retains a right and interest in the Credit Enhancement. Thus, when Security Benefit recaptures any Credit Enhancement, it is simply retrieving its own assets, and because a contractholder's interest in the Credit Enhancement is not vested, the contractholder is not deprived of a proportionate share of the net assets of the Separate Account.

6. Applicants state that because the amount paid as a death benefit does not include the amount of any Credit Enhancement applied to the Variable Contract 12 months prior to the date of death, the beneficiary arguably is not receiving the contractholder's proportionate share of the Separate Account's current net assets. Similarly, because the full or partial withdrawal amount of an Eligible Withdrawal results in the forfeiture of all or a portion of any Credit Enhancements applied during the 12 months preceding the Eligible Withdrawal, the contractholder arguably is not receiving his or her proportionate share of the Separate Account's current net assets. Applicants submit, however, that the recapture of the amount of any Credit Enhancement applied to the Variable Contract in the 12 months prior to the date of the contractholder's death or prior to an Eligible Withdrawal, as described herein, would not deprive a contractholder of his or her proportionate share of the issuer's current net assets. The prospectus clearly discloses that, for purposes of the death benefit, the beneficiary's interest in a Credit Enhancement will vest only if it has been added to Contract Value more than 12 months

² Under the laws of a number of states, if Free-Look rights are exercised, the sponsoring insurance company is required to refund purchase payments.

prior to the date of the contractholder's death.

As described above, the Contract provides that if a contractholder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (i) The sum of all purchase payments (not including Credit Enhancements), less any reductions caused by previous withdrawals; or (ii) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit less any Credit Enhancements applied during the 12 months prior to the date of death.

Similarly, the Contract provides in relevant part that in the event of an Eligible Withdrawal, a contractholder would forfeit all or part of any Credit Enhancement applied 12 months before the Eligible Withdrawal, depending upon the amount of the Eligible Withdrawal relative to the total purchase payments made in the 12 months preceding that Eligible Withdrawal. Furthermore, since a contractholder's interest in the Credit Enhancement allocated to Contract Value is only vested 12 months after the Credit Enhancement has been applied to the Variable Contract, Security Benefit asserts that it is simply retrieving its own assets when recapturing any Credit Enhancement when it pays a death benefit or in connection with an Eligible Withdrawal.

7. Applicants contend that annuity contracts, unlike life insurance contracts, are not intended to insure against the risk of premature death. Instead, annuity contracts are intended to provide an income stream to the contractholder or a named beneficiary, for the life of the annuitant or for a period of years. The risk to an insurer under an annuity contract typically is that the annuitant lives longer than the insurer's prediction.

8. Applicants assert that if Credit Enhancements are applied to the death benefit under an annuity contract before a minimum period of time has elapsed from the time that a Credit Enhancement has been credited, the insurer runs the risk of adverse selection. Similarly, the insurer runs the risk of adverse selection if Credit Enhancements are applied to withdrawals not subject to a withdrawal charge due to the confinement of the insured to a hospital or nursing facility or diagnosis of a terminal illness, unless a minimum period of time has elapsed from the time that a Credit Enhancement has been credited. With respect to the death benefit, the insurer runs the risk that, for example, a terminally ill contractholder will make

a large purchase payment in order to leverage the amount of money he or she is able to transfer to the beneficiary. With respect to the withdrawal charge waiver due to the confinement of the contractholder to a hospital or nursing facility or diagnosis of a terminal illness, the insurer runs the risk that, for example, a contractholder will make a large purchase payment in order to leverage the amount of money he or she is able to apply to medical care payments. SBL believes that requiring a year to elapse before a Credit Enhancement may be included in a death benefit or in an Eligible Withdrawal is an appropriate means to ensure that the Variable Contracts are not used as a risk-free vehicle to leverage the amount of money someone may wish to transfer to a beneficiary or to a medical care facility.

9. Section 22(c) of the 1940 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 to accomplish the same purposes as contemplated by section 22(a). Rule 22c-1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except as 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.

10. Applicants state that Security Benefit's recapture of the Credit Enhancement in instances in which: (i) Fewer than 12 months have elapsed between the time that the Credit Enhancement has been applied to the Contract, and the death of the Contractholder; or (ii) fewer than 12 months have elapsed between the time that the Credit Enhancement has been applied to the Contract, and an Eligible Withdrawal, might arguably 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 applicable subaccount of a Separate Account. In other words, because any such Credit Enhancement paid by Security Benefit is immediately added, on a conditional basis, to the Contract Value of certain contractholders, and further because these amounts are allocated to certain

subaccounts for the benefit of the contractholder, the net asset value of each subaccount arguably is affected by these credits.

11. Applicants contend, however, that the recapture of the Credit Enhancement under the circumstances summarized herein should not be deemed to be a violation of section 22(c) and Rule 22c-1. To the extent that the recapture practices summarized herein are considered to be technical violations of these provisions. Applicants respectfully request relief from section 22(c) and Rule 22c-1 in order to recapture Credit Enhancements as discussed above for Contracts and Future Variable Contracts provided within 12 months of: (i) The contractholder's death before the annuity start date; or (ii) an Eligible Withdrawal.

12. Applicants contend that the recapture of the Credit Enhancement does not involve either of the practices that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, 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.

13. Applicants argue that the proposed recapture of the Credit Enhancement poses no threat of dilution. To effect a recapture of a Credit Enhancement, Security Benefit redeems (and other SBL Insurers will redeem) interests in a contractholder's subaccounts at a price determined on the basis of the current accumulation unit value of each of the subaccounts of the Separate Account in which the contractholder's Contract Value is allocated. The amount recaptured in the event of a death benefit, or an Eligible Withdrawal, will be equal to the amount of the Credit Enhancement paid out of the assets of Security Benefit. That amount will be redeemed at the current accumulation unit value of the applicable subaccount(s) as of the date of receipt of the death claim, or withdrawal request, in proper order. Thus, Applicants assert that no dilution will occur upon the recapture of a Credit Enhancement. Applicants further submit that the second practice 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 Credit Enhancement. However, to avoid any uncertainty as to full compliance with the 1940 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 Credit Enhancement that is or will be made available under the Variable Contracts and Future Variable Contracts.

Conclusion

Applicants submit that their request for an order for the exemptive relief described above is 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, and that, therefore, the Commission should grant the requested order.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42732; File No. SR-Amex-00-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings

April 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 27, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Exchange proposes to amend Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings for purposes of authorizing the Chief Hearing Officer (or the Deputy Chief Hearing Officer) at the National Association of Securities Dealers Regulation, Inc. ("NASDR") Office of Hearing Officers to appoint NASDR hearing officers to act as Chairmen of Amex disciplinary panels. The text of the proposed rule change is below. New language is *italics*.

K. Exchange Disciplinary Proceedings

Rule

Rule 02(a). Selection of Hearing Officers

Whenever the Chairman of the Exchange shall be advised that a charge or charges have been served upon a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization, or that a written stipulation of facts and consent to a specified penalty has been entered into between any such person or persons and an officer of the Exchange, or that a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such member or member organization has not consented in writing to similar action by the Exchange, or that an employee or prospective employee of a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such employee or prospective employee has not consented in writing to similar action by the Exchange, the Chairman, *(or such person(s) as the Chairman may designate with Board approval)*, shall select, from among hearing officers appointed to serve on Exchange Disciplinary Panels, one such hearing officer to act as a chairman of a Disciplinary Panel which shall conduct a hearing with respect to such matter and take such action as may be authorized pursuant to the Constitution and rules of the Exchange.

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

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

Under Article V, Section 1(b)(2) of the Amex Constitution, the Chairman of the Board, subject to the approval of the Board, designates Exchange Officials and other persons to serve on the Hearing Board. Those who are designated to serve on the Hearing Board make up a pool of persons who can be asked to serve as members of disciplinary panels in Exchange disciplinary proceedings. Under Article V, Section 1(b)(3), the Chairman, again subject to Board approval, designates one or more hearing officers, who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters, to act as Chairmen of Amex disciplinary panels.

These two pools of people (*i.e.*, the people who serve as members of disciplinary panels, and the people who act as Chairmen of the disciplinary panels) are approved on an annual basis at the Board's organization meeting each January. Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings then requires the Amex Chairman, each time an Amex disciplinary proceeding is initiated, to select the specific hearing officer that will chair that particular Amex disciplinary panel.

Last year, the Amex entered into a formal agreement with the National Association of Securities Dealers ("NASD") under which the NASDR's Office of Hearing Officers provides hearing officers to chair all Amex disciplinary panels. The hearing officers are responsible for fulfilling the panel chair's duties as set forth in the Amex Constitution and Rules. The NASD has followed the above described procedure under Rule 2(a) with respect to the selection of a hearing officer to chair each Amex disciplinary panel, obtaining the approval of the Amex Chairman in each instance.

Amex proposes to amend Rule 2(a) to expedite the selection process by authorizing the Amex Chairman, or such person(s) as the Chairman may designate with Board approval, to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided written notice to the Commission on April 20, 2000, that it intended to file this proposal. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).