

elective, but most if not all funds use depository custody arrangements.¹⁰

The Commission staff estimates that, on an annual basis, about 471 funds¹¹ spend an average of 2 hours annually complying with the contract requirements of rule 17f-4. (e.g., signing contracts with additional custodians or securities depositories) for a total of 942 burden hours.

Rule 17f-4 requires that a custodian, upon request, provide a fund with any available reports on its internal accounting controls and financial strength. The Commission staff estimates that 130 custodians spend 12 hours annually in transmitting such reports to funds. In addition, approximately 47 funds (i.e., one percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. The Commission staff estimates that, for each of the 47 funds, depositories spend 12 hours annually transmitting reports to the funds. The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 2,124 hours.

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officer's instructions). The Commission staff estimates that 47 funds spend 10 hours annually implementing systems to prevent unauthorized officer's instructions, resulting in 470 burden hours for this requirement under rule 17f-4.

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's paperwork requirement is 3,536 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

¹⁰ The Commission staff estimates that more than 97 percent of all funds now use depository custody arrangements.

¹¹ Commission staff estimates that about 10 percent of all funds approve new depository custody arrangements yearly or a fund changes custodians (or securities depositories) every 10 years.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 8, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2606 Filed 10-13-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ac1-4, SEC File No. 270-405, OMB Control No. 3235-0462.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1-4 (17 CFR 240.11Ac1-4) under the Securities Exchange Act of 1934 requires specialists and market makers to publicly display a customer limit order when that limit order is priced superior to the quote that is currently being displayed by the specialist or market maker. Customer limit orders that match the bid or offer being displayed by the specialist or market maker must also be displayed if the limit order price matches the national best bid or offer. It is estimated that approximately 585 broker and dealer respondents incur an aggregate burden of 228,735 hours per year to comply with this rule.

Rule 11Ac1-4 does not contain record retention requirements. Compliance with the rule is mandatory. Responses

are not confidential. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the SEC, by sending an e-mail to *David_Rostker@omb.eop.gov*, and (ii) R. Corey Booth, Director/Chief Information Officer. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 4, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-2607 Filed 10-13-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26628; File No. 812-13114]

Security Benefit Life Insurance Company, et al.; Notice of Application

October 7, 2004.

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

ACTION: Notice of application for amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to permit, under specified circumstances, the recapture of certain credit enhancements ("Credit Enhancements").

APPLICANTS: Security Benefit Life Insurance Company ("Security Benefit"); First Security Benefit Life Insurance and Annuity Company of New York ("First Security Benefit," and collectively with Security Benefit, the "SBL Insurers"); SBL Variable Annuity Account XVII ("Variable Account XVII"); and Security Distributors, Inc. ("SDI").

SUMMARY OF APPLICATION: On December 11, 2001, the Commission issued an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit, under specified circumstances, the recapture of certain Credit Enhancements applied to the contract value of contractholders under certain contracts (the "Current Order"). See In the Matter of Security Benefit Life Insurance Company, *et al.*, Investment Company Act Release No. 25317 (Dec. 11, 2001) (order).

Applicants seek an amendment to the Current Order pursuant to Section 6(c) of the 1940 Act granting exemptions from 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 certain Credit Enhancements applied to the contract value of contractholders under circumstances not contemplated by the Current Order under: (i) The new flexible premium deferred variable annuity contract that Security Benefit issues through Variable Account XVII (the "New Contract"), and (ii) any future variable annuity contracts that would be funded by any other separate account of the SBL Insurers supporting variable annuity contracts (collectively with Variable Account XVII, the "Separate Accounts") or any other separate accounts that will be established in the future by the SBL Insurers to support variable annuity contracts (a "Future Account") and offered by any of the SBL Insurers ("Future Contracts"), provided that any such Future Contract is substantially similar in all material respects to the New Contract. Applicants also request relief under the order extend to any Separate Accounts or Future Accounts which may support Future Contracts that are substantially similar in all material respects to the New Contract described in the application.

FILING DATES: The application was filed on August 3, 2004, and amended and restated on September 10, 2004, and September 28, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on November 1, 2004, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

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

FOR FURTHER INFORMATION CONTACT: Sonny Oh, Staff Attorney, or Zandra Y. Bailes, 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 at the SEC's Public Reference Branch at 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. Security Benefit is a 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 \$12.5 billion.

2. First Security Benefit is a stock life insurance company organized under the laws of the State of New York on November 8, 1994. First Security Benefit offers variable annuity contracts in New York and is admitted to do business in that state. First Security Benefit is a wholly-owned subsidiary of Security Benefit Group, Inc., a financial services holding company that is ultimately controlled by Security Benefit Mutual Holding Company.

3. Variable Account XVII was established on November 24, 2003, as a segregated asset account of Security Benefit. Variable Account XVII is registered with the Commission as a unit investment trust (File No. 811-21481). Security Benefit is the legal owner of the assets in such Separate Account. Variable Account XVII is currently divided into 29 subaccounts ("Subaccounts"). Each Subaccount invests exclusively in shares of a corresponding open-end management investment company ("Series"), certain of which Series are managed by Security Management Company, LLC, a wholly-owned subsidiary of Security Benefit. Variable Account XVII funds the variable benefits available under the New Contract. Security Benefit has filed a registration statement on Form N-4 under the 1940 Act and the Securities Act of 1933, as amended (the "1933 Act") to register interests in Variable Account XVII under the New Contract (File No. 333-111589).

4. SDI serves as the principal underwriter for variable annuity contracts currently funded by the Separate Accounts (each a "Contract" and collectively, the "Contracts") issued

by the SBL Insurers, including the New Contract, but does not serve as principal underwriter for Contracts funded by the T. Rowe Price Variable Annuity Account of each of the SBL Insurers. SDI is registered as a broker/dealer with the Commission under the Securities Exchange Act of 1934, as amended, and is a wholly-owned subsidiary of Security Benefit Group, Inc., a financial services holding company, which is ultimately controlled by Security Benefit Mutual Holding Company.

5. Contractholders may allocate amounts paid to Security Benefit as consideration for the New Contract ("Purchase Payments") to each of the Subaccounts. Amounts allocated to the Subaccounts will increase or decrease in dollar value depending on the investment performance of the underlying mutual fund in which such Subaccount invests. Contractholders bear the investment risk for amounts allocated to a Subaccount. A contractholder's initial Purchase Payment must be at least \$25,000. Thereafter, the contractholder may choose the amount and frequency of Purchase Payments, except that the minimum subsequent Purchase Payment is \$25.

6. A contractholder may transfer Contract Value among the Subaccounts, subject to certain restrictions as described in the New Contract prospectus. At any time before the date when annuity payments are to begin ("Annuity Start Date"), a contractholder may surrender the New Contract for its Contract Value less any applicable withdrawal charges and any uncollected premium taxes ("Withdrawal Value"). A contractholder may also make partial withdrawals, including systematic withdrawals, from Contract Value, subject to certain restrictions described in the New Contract prospectus. The New Contract provides for several annuity options on either a variable basis, a fixed basis, or both.

7. A contractholder may return the New Contract within the "Free-Look Period," which is generally a ten-day period beginning when the contractholder receives the New Contract. In this event, Security Benefit will refund any Contract Value allocated to the Subaccounts, plus any charges deducted from such Contract Value, less the then current value of any Initial Credit Enhancements (as defined herein). Contractholders will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. Security Benefit will refund Purchase Payments allocated to the Subaccounts

rather than Contract Value in those states where it is required to do so.

8. If the contractholder dies prior to the Annuity Start Date while the New Contract is in force, Security Benefit will pay the death benefit proceeds, less any uncollected premium tax, to the beneficiary designated by the contractholder (“Designated Beneficiary”) upon receipt of due proof of the contractholder’s death and instructions regarding payment to the Designated Beneficiary.

9. Security Benefit does not deduct sales load from Purchase Payments

before allocating them to a contractholder’s Contract Value. If a contractholder withdraws Contract Value, Security Benefit may deduct a contingent deferred sales charge (which may also be referred to as a withdrawal charge), which varies depending on how long a contractholder’s Purchase Payment has been held under the New Contract. The withdrawal charge will be waived on withdrawals to the extent that total withdrawals in any 12-month period, measured from the Contract Date (as defined in the New Contract prospectus) including systematic

withdrawals, do not exceed the Free Withdrawal amount. The Free Withdrawal amount is equal in the first Contract Year, to 10 percent of Purchase Payments made during the year and, in any subsequent Contract Year, to 10 percent of Contract Value as of the first day of that Contract Year. The withdrawal charge applies to the portion of any withdrawal, consisting of Purchase Payments that exceeds the Free Withdrawal amount.

10. The withdrawal charge under a New Contract is calculated according to the following schedule:

“Age” of payment in years	1	2	3	4	5	6	7	8
Withdrawal Charge*	8%	7.45%	6.5%	5.5%	5%	5%	4%	0%

* The withdrawal charge applicable to the variable annuity contracts described in the Current Order was deducted in an identical manner as the withdrawal charge under the New Contract. The withdrawal charge schedule set forth in the Current Order, however, differed from that of the New Contract and was as follows: Year 1—7%; Year 2—7%; Year 3—6%; Year 4—5%; Year 5—4%; Year 6—3%; Year 7—2%; and Year 8 and later—0%.

11. Security Benefit deducts a daily charge for mortality and expense risks assumed by Security Benefit under the New Contract equal to 0.85% on an annual basis, of each Subaccount’s average daily net assets. During the Annuity Period, the mortality and expense risk charge may increase to 1.25% under certain annuity options. Security Benefit deducts a daily charge for the risks it assumes under the applicable rider equal to an annual rate of 0.95% of each Subaccount’s average daily net assets. Security Benefit will deduct the rider charge for the life of the New Contract beginning on the Contract Date and ending on the Annuity Start Date if one of Annuity Options 1 through 4, 7 or 8 is elected. Security Benefit will deduct the rider charge for the life of the New Contract if Annuity Option 5 or 6 is elected. Security Benefit deducts a daily administration charge under the New Contract equal to an annual rate of 0.15% of each Subaccount’s average daily net assets to compensate for the expenses associated with administration of the New Contract and operation of the Subaccounts. Because various states and municipalities impose a tax on premiums on annuity contracts received by insurance companies, Security Benefit assesses a premium tax charge to reimburse itself for premium taxes that it incurs in connection with a New Contract.

12. The New Contract makes available three riders as follows: (1) The Recurring Rewards Rider; (2) the Future Rewards Rider; and (3) the Flexible Rewards Rider (collectively, the “Credit Enhancement Riders”). Each Credit Enhancement Rider makes available a

Credit Enhancement, which is an amount added to Contract Value by Security Benefit. A Contractholder may purchase one such Rider only at issue. When purchased, a Credit Enhancement will be added to Contract Value for each Purchase Payment made in the first Contract Year (an “Initial Credit Enhancement”) in an amount equal to 2% of such Purchase Payments for the Recurring Rewards Rider; 5% of such Purchase Payments for the Future Rewards Rider; and 4% of such Purchase Payments for the Flexible Rewards Rider. Any Initial Credit Enhancement will be allocated among the Subaccounts in the same proportion as the Purchase Payment is allocated.

13. After the Initial Credit Enhancement, each Credit Enhancement Rider provides an additional Credit Enhancement, which is a percentage of Contract Value on the date applied (“Additional Credit Enhancement”). Additional Credit Enhancements will be allocated among the Subaccounts in the same proportion as Contract Value on the date of receipt of the Additional Credit Enhancement. There is no vesting schedule attached to the Additional Credit Enhancements, which vest immediately. As a result, there is no recapture of Additional Credit Enhancements in the event of a full or partial withdrawal or payment of a death benefit under the New Contract.

14. The Recurring Rewards Rider provides a 2% Additional Credit Enhancement at every third Contract anniversary that occurs prior to the Annuity Start Date on the basis of the Contract Value at that time, as long as the New Contract is in force. The Future Rewards Rider provides a 2%

Additional Credit Enhancement on the tenth Contract anniversary and on every second Contract anniversary thereafter that occurs prior to the Annuity Start Date on the basis of the Contract Value at that time, as long as the New Contract is in force (a “Future Credit Enhancement”). The amount of the Future Credit Enhancement will be paid on the tenth, 12th, and 14th Contract anniversaries, and so on; provided that any such anniversary occurs prior to the Annuity Start Date. The Flexible Rewards Rider provides a one-time Additional Credit Enhancement (the “Flexible Credit Enhancement”) on the “Election Date.” The “Election Date” is the date in which an Owner’s request to elect the Flexible Credit Enhancement is received by Security Benefit. The Election Date must be after the fifth Contract anniversary and prior to the Annuity Start Date while the New Contract is in force. Security Benefit will add the Flexible Credit Enhancement on the Election Date in an amount equal to 4% of Contract Value on that date.

15. Security Benefit will recapture Initial Credit Enhancements on withdrawals only to the extent that total withdrawals in a Contract Year, including systematic withdrawals, exceed the Free Withdrawal amount for that Contract Year. As a result, a contractholder may withdraw up to the Free Withdrawal amount during each Contract Year without any recapture of Initial Credit Enhancements that have not yet vested. Also, the Free Withdrawal amount will reduce the percentage of unvested Initial Credit Enhancements that is recaptured in the

event of withdrawals that exceed the Free Withdrawal amount.

16. In the event of a full or partial withdrawal, Security Benefit will recapture all or part of any Initial Credit

Enhancement that has not yet vested. An amount equal to 1/7 of the Initial Credit Enhancement will vest as of each anniversary of the New Contract's date of issue and the Initial Credit

Enhancement will be fully vested at the end of seven years from that date. The percentage of Initial Credit Enhancements that has vested as of each Contract anniversary is set forth below:

CONTRACT ANNIVERSARY/PERCENTAGE OF INITIAL CREDIT ENHANCEMENTS VESTED AS OF ANNIVERSARY
[In percent]

1	2	3	4	5	6	7
14.28	28.57	42.85	57.14	71.42	85.71	100

The amount to be forfeited in the event of a withdrawal is equal to a percentage of the Initial Credit Enhancement that has not yet vested. The percentage is determined for each withdrawal as of the date of the withdrawal by dividing: (i) The amount of the withdrawal, including any withdrawal charges, less any Free Withdrawal amount, by (ii) the Contract Value immediately prior to the withdrawal. If a contractholder exercises the right to return the New Contract during the Free-Look period, Contract Value will be reduced by the then current value of any Initial Credit Enhancements applied. Additionally, death benefit proceeds will exclude any Initial Credit Enhancements applied during the 12 months prior to the date of the contractholder's death.

17. The New Contract 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 uncollected premium tax. If a contractholder dies before the Annuity Start Date, the amount of the death benefit will be the greater of: (1) The sum of all Purchase Payments (not including Initial or Additional Credit Enhancements), less any reductions caused by previous withdrawals, including withdrawal charges ("Purchase Payment Death Benefit"); or (2) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit (less the amount of any Initial Credit Enhancements applied during the 12 months prior to the date of the contractholder's death) ("Contract Value Death Benefit"). If a contractholder dies prior to the Annuity Start Date and due proof of death and instructions regarding payment are not received by Security Benefit at its Home Office within six months of the date of the contractholder's death, the death benefit will be the Contract Value Death Benefit. Only Initial Credit Enhancements applied during the 12 months prior to the date of the

contractholder's death are subject to recapture in the event of the contractholder's death. In addition, if a contractholder dies prior to the Annuity Start Date and after the fifth Contract anniversary and no Flexible Credit Enhancement has been applied, Security Benefit will apply the Flexible Credit Enhancement to Contract Value as of the date that the death benefit is processed.

18. The relief sought in the application is intended to permit the SBL Insurers to: (i) Deduct from any full or partial withdrawal a proportionate amount of any Initial Credit Enhancement that has not yet vested; and (ii) deduct from any death benefit, except the Purchase Payment Death Benefit, the amount of any Initial Credit Enhancement applied during the 12 months prior to the date of the contractholder's death. The requested relief would also apply to any Future Contract funded by the Separate Accounts or Future Accounts that recapture Initial Credit Enhancements; provided that any such Future Contract is substantially similar in all material respects to the New Contract.

Applicants' Legal Analysis

1. 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 22c-1 thereunder to the extent deemed necessary to permit the SBL Insurers to recapture under the New Contract or under Future Contracts that are substantially similar in all material respects to the New Contract: (1) the amount of any Initial Credit Enhancement that has not yet vested from the amount of any full or partial withdrawal during the first seven Contract Years; and (2) the amount of any Initial Credit Enhancement applied during the 12 months prior to the date of the contractholder's death from the amount of any death benefit, except the Purchase Payment Death Benefit.

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

3. 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.

4. Applicants state that the amount paid in the event of a full or partial withdrawal excludes a proportionate amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract in the seven years prior to the date of the full or partial withdrawal. The amount of any death benefit, which is based upon Contract Value, does not include the amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract in the 12 months prior to the date of the contractholder's death. In each instance, the contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account's then-current net assets. Applicants submit, however, that the recapture of the amount of any Initial Credit Enhancement conditionally applied to the contractholder's New Contract during the seven-year period beginning on the New Contract's date of issue or the 12-month period prior to the date of the contractholder's death, as described in the application, would not deprive a contractholder of his or her proportionate share of the issuer's current net assets. Until or unless the Initial Credit Enhancement is vested, Security Benefit retains a right and interest in the Initial Credit

Enhancement. Thus, when Security Benefit recaptures any Initial Credit Enhancement (or any portion thereof) in instances in which it pays a Withdrawal Value or death benefit, it is simply retrieving its own assets. Because a beneficiary's interest in the Initial Credit Enhancement is not vested, the beneficiary is not deprived of a proportionate share of the net assets of the applicable Separate Account. Similarly, because a contractholder's interest in the Initial Credit Enhancement is not unconditionally vested, the contractholder is not deprived of a proportionate share of the net assets of the applicable Separate Account if an Initial Credit Enhancement is fully or partially recaptured in connection with a withdrawal.

5. Applicants submit that annuity contracts, unlike life insurance contracts, are not intended to insure against the risk of the premature death of the insured. 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.

6. According to the Applicants, if Initial Credit Enhancements are applied unconditionally to the death benefit under an annuity contract before a minimum period of time has elapsed from the time that an Initial Credit Enhancement has been credited, the insurer runs the risk of anti-selection. "Anti-selection" can generally be described as a risk that persons obtained coverage based on knowledge that a contingency that triggers the payment of an insurance benefit is likely to occur, or is to occur shortly. 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. The Applicants believe that requiring a year to elapse before an Initial Credit Enhancement may be included in a death benefit is an appropriate means to ensure that the New Contract is not used as a risk-free vehicle for persons to leverage the amount of money they wish to transfer to a beneficiary.

7. 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 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.

8. Applicants state that Security Benefit's recapture of the Initial Credit Enhancement (or portion thereof) with respect to the New Contract in instances in which: (i) A withdrawal is made and fewer than seven years have elapsed since the issue date of the New Contract, or (ii) a death benefit is paid, other than a Purchase Payment Death Benefit, and fewer than 12 months have elapsed between the time that the Initial Credit Enhancement has been applied to the New Contract and the death of the contractholder, 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 Initial 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 participating contractholder, the net asset value of each Subaccount arguably is affected by these credits.

9. Applicants contend, however, that the recapture of the Initial Credit Enhancement under the circumstances described in the application should not be deemed to be a violation of Section 22(c) and Rule 22c-1. To the extent that the recapture practices described in the application are considered to be technical violations of these provisions, Applicants request relief from Section 22(c) and Rule 22c-1 in order to recapture Initial Credit Enhancements as discussed above for the New Contract and substantially similar Future Contracts to the extent that a SBL Insurer has provided Initial Credit Enhancements to a Contractholder within (i) seven years of a full or partial withdrawal; or (ii) 12 months of the Contractholder's death before the Annuity Start Date where the death benefit is not a Purchase Payment Death Benefit.

10. Applicants represent that it is not administratively feasible to track the Initial Credit Enhancements in the Separate Accounts after the Initial Credit Enhancements are applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the Separate Accounts, including any Initial Credit Enhancements. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the contractholder's Contract Value did not include any Initial Credit Enhancement. Security Benefit nonetheless represents that the New Contract's fees and charges, in the aggregate, are reasonable in relation to services rendered, the expenses expected to be incurred, and the risks assumed by Security Benefit.

11. Applicants assert that the recapture of the Initial 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.

12. Applicants submit that the proposed recapture of the Initial Credit Enhancement poses no such threat of dilution. To effect a recapture of an Initial Credit Enhancement, Security Benefit redeems (and First Security Benefit will redeem) interests in a contractholder's Subaccount(s) 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 full or partial withdrawal or death benefit, will be equal to the amount of the Initial Credit Enhancement paid out of the General Account 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, no dilution will occur upon the recapture of an Initial Credit Enhancement.

13. Applicants also 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.

14. 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. An order that would be applicable to Future Accounts created by SBL Insurers would reduce administrative expenses and maximize the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in the application. Having Applicants file additional exemptive applications would impair Applicants' ability to effectively take advantage of business opportunities that may arise. Further, Applicants undertake that Future Contracts funded by the Separate Accounts, or by Future Accounts, which seek to rely on the order issued pursuant to the application will be substantially similar in all material respects to the New Contract.

15. Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E4-2597 Filed 10-13-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27900]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 6, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for

public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 28, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 28, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Portland General Electric Company (70-10250)

Portland General Electric Company ("Portland General"), 121 SW Salmon Street, Portland, Oregon 97204, a wholly owned electric utility company subsidiary of Enron Corp. ("Enron"), a registered holding company, has filed an application under sections 9(a)(1) and 10 of the Act.

Portland General proposes to purchase ("Purchase") the coal handling facility ("Facility") located at its Boardman Coal Plant ("Boardman Plant") in eastern Oregon. Portland General, an Oregon corporation, is an integrated electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity in the State of Oregon. Portland General also sells electricity and natural gas in the wholesale market to utilities and power marketers located throughout the western United States. Portland General's service area is located entirely within Oregon and includes 51 incorporated cities, of which Portland and Salem are the largest, within a state-approved service area allocation of approximately 4,000 square miles. Portland General estimates that at the end of 2003 its service area population was approximately 1.5 million, comprising about 43% of the state's population. At December 31, 2003, Portland General served approximately 754,000 retail customers. Portland General has approximately 26,085 miles of electric transmission and distribution lines and owns 1,957 MW of generating capacity. Portland General also has long-term power purchase contracts for 510 MW from four hydroelectric

projects on the mid-Columbia River and power purchase contracts of one to twenty-six years for another 740 MW from Bonneville Power Administration, other Pacific Northwest utilities, and certain Native American tribes. As of December 31, 2003, Portland General's total firm resource capacity, including short-term purchase agreements, was approximately 3,883 MW (net of short-term sales agreements of 3,910 MW). Portland General's peak load in 2003 was 3,351 MW.

Portland General is a reporting company under the Securities Exchange Act of 1934 and it files annual, quarterly and periodic reports with the Commission. As of and for the year ended December 31, 2003, Portland General and its subsidiaries on a consolidated basis had operating revenues of \$1,752 million, net income of \$58 million, retained earnings of \$545 million, and assets of \$3,372 million.

Portland General is regulated by the Oregon Public Utility Commission ("OPUC") with regard to its rates, terms of service, financings, affiliate transactions and other aspects of its business. Additionally, the Federal Energy Regulatory Commission regulates the company's activities in the interstate wholesale power markets.

The Boardman Plant is a coal-fueled plant located in Boardman, Oregon with capacity of 600 MW. Portland General owns a 65% undivided interest in the Boardman Plant and is the operator of the plant. The remaining 35% is owned by Idaho Power Company, Pacific Northwest Generating Cooperative, and General Electric Credit Corporation through Bank of New York (the successor to J Henry Schroeder Bank & Trust Company) (collectively, "Boardman Plant Co-Owners"), none of whom are affiliated with Portland General.

Portland General requests authority to acquire the Facility, consisting of the machinery, equipment, mechanical and electrical equipment, fixtures, tangible personal property and other property, real and personal, constructed and installed for the unloading, transfer, storage, handling and crushing of coal for the Boardman Plant. Currently, Portland General is the sole lessee of the Facility under a lease agreement ("Lease Agreement") under a leverage financing transaction ("Financing Transaction") entered into in 1979. The Facility is owned by a trust ("Trust"), the trustee of which is Wells Fargo Bank N.A. ("Owner-Trustee") and the beneficiary of which is ICON/Boardman Facility LLC ("Owner Participant"), a participant in the Financing Transaction. Under the Lease