

terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a-8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 600 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4,200 hours.

This estimate represents an increase of 3,600 hours from the prior estimate of 600 hours. The increase results from an increase in the estimated average annual hour burden of meeting the requirements of 17a-8.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be \$15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be \$50,000. The Commission staff estimates that each year approximately 10 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be \$900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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 OMB control number.

General comments regarding the above information 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. E4-2605 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 17f-4, SEC File No. 270-232, OMB Control No. 3235-0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collection of information discussed below.

Section 17(f) of the Investment Company Act of 1940 (the "Act")¹ permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Securities and Exchange Commission ("Commission"). Rule 17f-4 under the Act specifies the conditions for the use of securities depositories by funds² and custodians.

The Commission adopted rule 17f-4 in 1978 to reflect the custody practice and commercial law of that time. In particular, the rule was designed to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code ("UCC") ("Prior Article 8").³ Custody practices have changed substantially since 1978, and the drafters of the UCC approved major amendments to Article 8 in 1994 to reflect these changes ("Revised Article 8").⁴ While Prior Article 8 reflected

¹ 15 U.S.C. 80a.

² As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8438 (Feb. 20, 2003)]. The term "fund" is used in this Notice to mean all registered investment companies.

³ Article 8 of the UCC governs the ownership and transfer of investment securities. See Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) ("Prior Article 8"); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] at nn. 4-7, 9, 12 and accompany text (citing provisions of Prior Article 8).

⁴ See Uniform Commercial Code, Revised Article 8—Investment Securities (With conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments)

expectations that depository practice would involve registering investors' interests in securities on the issuer's own books, Revised Article 8 recognizes that under current practice, an investor usually maintains its securities through an account with a broker-dealer, bank or other financial institution ("securities intermediary").⁵ Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements, and every State has enacted Revised Article 8 into law.

On February 13, 2003, the Commission adopted amendments to reflect the recent changes in custody practices and commercial law.⁶ The amendments updated and simplified the rule, and substantially eased rule 17f-4's reporting, recordkeeping, and other compliance requirements. Most prominently, the amended rule eliminated the confirmation, segregation, and earmarking requirements.⁷ In place of these detailed requirements, amended rule 17f-4 required funds to modify their contracts with their custodians or securities depositories to add two provisions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a "securities intermediary" to obtain and thereafter maintain financial assets.⁸ Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.⁹

The Commission staff estimates that 4,866 respondents (including 4,711 active registered investment companies, 130 custodians, and 25 possible securities depositories) are subject to the requirements in rule 17f-4. The rule is

("Revised Article 8"), Prefatory Note at I.B., C., and D.

⁵ Revised Article 8, *supra* note 3, section 8-102(a)(14) and Prefatory Note at III.A. (defining a "securities intermediary").

⁶ See *supra* note 2.

⁷ Previously, the custodian was required to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian (the "confirmation requirement"). The custodian also had to maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities (the "segregation requirement") and had to identify on the custodian's records a portion of the total customer securities as attributed to the fund (the "earmarking requirement"). Revised Article 8 made these custodial compliance requirements unnecessary to protect fund assets.

⁸ Rule 17f-4(a)(1). This provision simply incorporates into the rule the standard of care provided for by section 504(c) of Revised Article 8 when the parties have not agreed to a standard.

⁹ If a fund deals directly with a depository, similar requirements apply to the depository.

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.

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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.

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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).