

participating in a joint transaction with each other Praxis Fund through the pooling of assets in the MMA Pools, and that the Praxis Funds could be deemed to be participating in a joint transaction with MMA-CDI through their investment in CDI Notes.

5. In determining whether to grant an exemption under rule 17d-1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that the Praxis Funds' purchases of CDI Notes will be on a basis that is no less advantageous than that of other participants.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25262; File No. 812-12216]

### Security Benefit Life Insurance Company, et al.

November 14, 2001.

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

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

**SUMMARY OF APPLICATION:** Applicants seek an order to permit, under specified circumstances, the recapture of certain credit enhancement applied to the Contract value under (a) two flexible premium deferred variable annuity contracts (the "Contracts") issued by Security Benefit Life Insurance Company ("Security Benefit") through SBL Variable Annuity Account XIV ("Variable Account XIV"), and (b) future variable contracts offered by Security Benefit and First Security Benefit Life Insurance and Annuity Company of New York ("First Security Benefit") through a Separate Account (defined below) or Future Accounts (defined below) which contracts are substantially similar in all material respects to the Contracts ("Future Contracts").

**Applicants:** Security Benefit and First Security Benefit (the "SBL Insurers"); Variable Account XIV; any other separate account of the SBL Insurers supporting variable annuity contracts (together with Variable Account XIV "Separate Accounts"); any other separate accounts that will be established in the future by the SBL Insurers to support variable contracts ("Future Accounts"), and Security Distributors, Inc. ("SDI").

**Filing Dates:** The application was filed on August 9, 2000 and amended and restated on October 25, 2001.

**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 SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m., on December 10, 2001, and should be accompanied by proof of service on the Applicant 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 may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Amy J. Lee, Esq., Associated General Counsel, Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636-0001.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, 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 [tel. (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 \$10.3 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 contracts in New York and is admitted to do business in that state. It is an indirect wholly owned subsidiary of Security Benefit.

3. Security Benefit established Variable Account XIV on June 26, 2000 pursuant to Kansas law. Variable Account XIV is registered with the Commission as a unit investment trust and is currently divided into 60 subaccounts ("Subaccounts"). Each Subaccount invests exclusively in shares of a corresponding open-end management investment company ("Series"). Certain of the Series are managed by Security Management Company, LLC, a wholly owned subsidiary of Security Benefit. Variable Account XIV funds the variable benefits available under the Contracts. Security Benefit has filed registration statements 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 XIV under the Contracts. The Contracts are the Initial Contract (File No. 333-41180) and a New Contract (File No. 333-52114) (each a "Contract" and together, the "Contracts").

4. SDI, a wholly owned subsidiary of Security Benefit, serves as the principal underwriter for the variable contracts issued by Security Benefit, including the Contracts. 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 wholly owned by Security Benefit.

5. Security Benefit does not deduct a sales load from purchase payments. If a Contract holder withdraws Contract value, Security Benefit may deduct a contingent deferred sales charge ("withdrawal charge"). The withdrawal charge depends on how long a purchase payment has been held under a Contract. The withdrawal charge on a payment withdrawal during the first and second year is subject to a 7% withdrawal charge. The charge is 6% for payments withdrawn in the third year, 5% in year four, 4% in year five, 3% in year six and 2% in year seven. There is not withdrawal charge for payments that have been held under a Contract for seven complete years.

6. The withdrawal charge will be waived on withdrawals to the extent that total withdrawals in any 12-month period, measured from the Contract date, do not exceed the free withdrawal

amount. The free withdrawal amount in the first Contract year is equal to 10% of Purchase Payments made during the year. In any subsequent Contract year, the free withdrawal amount is equal to 10% of Contract value as of the first day of that Contract year.

7. Security Benefit deducts a charge for mortality and expense risks assumed by Security Benefit under the Contracts. The mortality and expense risk charge is determined each month by reference to the amount of the Contract value as follows:

| Contract value                                  | Initial contract (percent) | New contract (percent) |
|---|----------------------------|------------------------|
| Less than \$25,000 .....                        | .85                        | 1.10                   |
| At least \$25,000 but less than \$100,000 ..... | .70                        | .95                    |
| \$100,000 or more .....                         | .60                        | .85                    |

8. Security Benefit deducts a monthly charge for optional riders that may be elected by a Contract holder. The charge may not exceed 1% of Contract value for the Initial Contract and 2% for the New Contract.

9. Security Benefit also deducts a daily administration charge under the Contracts. The charge is equal to .15% annually for assets allocated to the Subaccounts under the Initial Contract. The daily charge under the New Contract differs by Subaccounts and ranges from an annual rate of .25% to .60%. In addition, a \$30 administration charge is deducted under both Contracts on the Contract anniversary. Security Benefit also assesses a premium tax charge to reimburse itself or premium taxes that it incurs in connection with a Contract.

10. An optional Extra Credit Rider (the "Rider") under the Contract makes available a credit enhancement ("Credit Enhancement"), which is an amount added to Contract value by Security Benefit. A Contract holder must purchase the Rider at issue. If purchased, a Credit Enhancement of 3%, 4% or 5% or purchase payments, as elected in the application, will be added to Contract value for each purchase payment made in the first Contract year. Any Credit Enhancement will be allocated among the Subaccounts in the same proportion as the purchase payment is allocated.

11. Security Benefit deducts a charge for the Rider for a period of seven years from a Contract's date of issue. After the end of seven years from a Contract's date of issue, Security Benefit will no longer assess a charge for the Rider and

the Credit Enhancements will be fully vested. The charge for this Rider, which is equal to a percentage, on an annual basis, of Contract value, varies based upon the interest rate selected by the Contract holder as set forth below:

| Interest rate (percent) | Rider charge (percent) |
|-------------------------|------------------------|
| 3 .....                 | .45                    |
| 4 .....                 | .60                    |
| 5 .....                 | .75                    |

12. The Contracts permit Contract holders to cancel their Contracts and to receive a refund during the Free-Look Period. The Free-Look Period generally is a 10-day period beginning on the day a Contract holder receives his or her Contract. If a Contract holder returns a Contract during the Free-Look Period, the Contract will be canceled and treated as void from the Contract date.

13. In most instances, a Contract holder who returns a Contract during the Free-Look Period is entitled to a refund of his or her Contract value plus any charges deducted from such Contract value, as of the end of the business day on which the Contract is received for cancellation. A Contract holder will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. As is disclosed in the Contract prospectus, the value of any Credit Enhancement added to the Contract value will be deducted if the Contract holder returns the Contract during the Free-Look Period.

14. In the event of a full or partial withdrawal under a Contract with a Rider in force, Security Benefit will recapture all or part of any Credit Enhancement that has not yet vested. An amount equal to 1/2 of the Credit Enhancement will vest as of each anniversary of the Contract's date of issue and the Credit Enhancement will be fully vested at the end of seven years from that date. The amount to be forfeited in the event of a withdrawal is equal to a percentage of the Credit Enhancement that has not yet vested. The percentage is determined for each withdrawal as of the date of the withdrawal by dividing the amount of the withdrawal, including any withdrawal charges, by the Contract value immediately prior to the withdrawal.

15. The Contracts provide for a death benefit upon the death of the Contract holder prior to the annuity start date. The death benefit proceeds will be the death benefit reduced by any outstanding loan balance including loan interest, any pro rata account

administration charge and any uncollected premium tax. If a Contract holder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (a) The sum of all Purchase Payments (not including Credit Enhancement if an Extra Credit Rider was in effect), less any reductions caused by previous withdrawals, including withdrawal charges ("Purchase Payment Death Benefit"); or (b) the Contract value on the date due proof of death and instructions regarding payment are received by Security Benefit (less the amount of any Credit Enhancement applied during the 12 months prior to the date of the Contract holder's death if an Extra Credit Rider was in effect) ("Contract Value Death Benefit"). If a Contract holder 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 Contract holder's death, the death benefit will be the Contract Value Death Benefit. If a Contract holder has purchased one of the following riders, the death benefit will be as determined under the terms of the applicable rider: (a) Annual Stepped Up Death Benefit; (b) Guaranteed Growth Death Benefit; (c) Combined Annual Stepped Up and Guaranteed Growth Death Benefit; and (d) Combined Guaranteed Growth Death Benefit and Guaranteed Minimum Income Benefit. Each of those riders also excludes Credit Enhancements from any Purchase Payment Death Benefit and reduces the amount of any other death benefit by an amount equal to any Credit Enhancements applied during the 12 months prior to the date of the Contract holder's death.

16. Applicants seek exemptions pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and rule 22c-1 thereunder to the extent necessary to permit the SBL Insurers with respect to the Contracts to: (a) deduct from any full or partial withdrawal a proportionate amount of any Credit Enhancement that has not yet vested; and (b) deduct from any death benefit, except the Purchase Payment Death Benefit, the amount of any Credit Enhancement applied during the 12 months prior to the date of the Contract holder's death. The requested exemptions would also apply to any Future Contract funded by the Separate Accounts or Future Accounts that recapture Credit Enhancements provided that any such Future Contract is substantially similar in all material respects to the Contracts.

### Applicants' Legal Analysis

1. 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."

2. 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.

3. Applicants state that the amount paid in the event of a full or partial withdrawal excludes a proportionate amount of any Credit Enhancement conditionally applied to the Contract in the seven years prior to the date of the full or partial withdrawal. The amount of any death benefit that is based upon Contract value does not include the amount of any Credit Enhancement conditionally applied to the Contract in the 12 months prior to the date of the Contract holder's death. In each instance, the Contract holder arguably is not receiving his or her proportionate share of applicable Separate Account's then-current net assets. Applicants submit, however, that the recapture of the amount of any Credit Enhancement conditionally applied to the Contract during the seven-year period beginning on the date of issue of the Contract or the 12-month period prior to the date of the Contract holder's death would not deprive a Contract holder of his or her proportionate share of the issuer's current net assets. Until or unless the Credit Enhancement is vested, Security Benefit retains a right and interest in the Credit Enhancement. The prospectus clearly discloses that, for purposes of withdrawals, a Credit Enhancement will vest only at the end of the seven-year period beginning on the Contract's date of issue. The prospect also clearly discloses that, for purposes of the death benefit, a Credit Enhancement will vest only if it has been added to the Contract value of a Contract holder as of a date more than 12 months prior to the date of the Contract holder's death.

4. 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 Contract holder 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.

5. According to the Applicants, if 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 a Credit Enhancement has been credited, the insurer runs the risk of adverse selection. The insurer runs the risk that, for example, a terminally ill Contract holder will make a large purchase payment in order to leverage the amount of money he or she is able to transfer to the beneficiary. Applicants that requiring a year to elapse before a Credit Enhancement may be included in a death benefit is an appropriate means to ensure that the Contracts are not used as a risk-free vehicle for persons to leverage the amount of money they wish to transfer to a beneficiary.

6. 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.

7. Applicants state that Security Benefit's recapture of the Credit Enhancement with respect to the Contracts in instances in which: (a) A withdrawal is made and fewer than seven years have elapsed since the issue date of the Contract, or (b) a death benefit is paid, other than the Purchase Payment Death Benefit, and fewer than 12 months have elapsed between the time that the Credit Enhancement has been applied to the Contract, and the death of the Contract holder, 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 Contract holders, and further because these amounts are allocated to certain Subaccounts for the benefit of the participating Contract holder, the net asset value of each Subaccount arguably is affected by these credits.

8. Applicants content, however, that the recapture of the 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 Credit Enhancements as discussed above for the Contracts and Future Contracts to the extent that an SBL Insurer has provided Credit Enhancements to a Control holder within: (a) Seven years of a full or partial withdrawal; or (b) 12 months of the Contract holder's death before the Annuity Start Date where the death benefit is not a Purchase Payment Death Benefit.

9. Applicants assert 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: (a) 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 (b) other unfair results, including speculative trading practices.

10. Applicants submit 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 the other SBL Insurer will redeem) interests in the 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 Contract holder'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 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 a Credit Enhancement.

11. 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.

### Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary and 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, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25270; File No. 812-12660]

### John Hancock Variable Series Trust I, et al.

November 15, 2001.

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

**ACTION:** Notice of application under section 17(g) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order to permit (a) two series of John Hancock Variable Series Trust I ("Trust I") each to acquire all of the assets and liabilities of one of two series of John Hancock Declaration Trust ("Declaration Trust") and (b) four other series of Trust I each to acquire all of the assets and liabilities of one of four additional series of Trust I.

*Applicants:* The Declaration Trust, Trust I, John Hancock Advisers, Inc. ("Hancock Advisers"), and John Hancock Life Insurance Company ("John Hancock").

*Filing Date:* The application ("Application") was filed on October 10, 2001 and amended and restated on November 15, 2001.

*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 December 6, 2001, 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 my writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, The Declaration Trust and Hancock Advisers, 101 Huntington Avenue, Boston, MA 02198; Trust I and John Hancock, 197 Charendon Street, Boston, MA 02117.

**FOR FURTHER INFORMATION CONTACT:** Harry Eisenstein, Senior Counsel, or Keith Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, 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 20549-0102.

### Applicants' Representations

1. The Declaration Trust and Trust I are both Massachusetts business trusts and each is registered as an open-end management investment company. The Declaration Trust is comprised of 15 series (or "Funds"), and Trust I is comprised of 33 such Funds.

2. Hancock Advisers is the investment manager of the Declaration Fund and John Hancock is the investment manager of the Trust I Funds.

3. Two of the Declaration Trust's Funds are party to one of the transactions for which the application seeks exemptive relief: the V.A. International Fund and the V.A. Mid Cap growth Fund ("Declaration Funds").

4. Ten of Trust I's Funds are party to a transaction for which the application seeks exemptive relief: the International Equity Fund, the Fundamental Growth Fund, the Large Cap Value CORE II Fund, the Large Cap Value CORE Fund, the Active Bond II Fund, the Active Bond Fund, the Aggressive Balance Fund, the Managed Fund, the Mid Cap Blend Fund, and the Growth & Income Fund (collectively, the "Trust I Funds").

5. The application requests exemptive relief with respect to mergers of certain

of the Funds listed in 3 and 4 above ("Acquired Funds") into the remaining Funds listed there ("Acquiring Funds") with each Fund listed as an Acquired Fund below to be merged into the corresponding Fund listed as an Acquiring Fund, as follows:

| Acquired fund            | Corresponding acquiring fund |
|--------------------------|------------------------------|
| V.A. International ..... | International Equity.        |
| V.A. Mid Cap Growth      | Fundamental Growth.          |
| Large Cap Value          | Large Cap Value              |
| CORE II.                 | CORE.                        |
| Active Bond II .....     | Active Bond.                 |
| Aggressive Balanced      | Managed.                     |
| Mid Cap Blend .....      | Growth & Income.             |

6. The shares of the Funds are currently sold exclusively to John Hancock and certain insurance companies affiliated with John Hancock (collectively, the "Insurance Companies") for allocation to separate accounts ("Separate Accounts") established to fund benefits under variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by these companies. The Separate Accounts are registered as investment companies of the unit investment trust type under the Act. The Insurance Companies no longer are making available any of the Acquired Funds as investment options under new Contracts. Shares held by an investment manager exceed five percent of the outstanding shares of one of the Funds in each of the mergers described above.

7. Contract owners may choose to allocate their contract premiums and account values among various investment options, including one or more of the Acquired funds and/or the Acquiring Funds. As a result, owners may participate, indirectly, in the performance of those Funds.

8. With one exception, the investment objective of each Acquired Fund is identical to that of its corresponding Acquiring Fund.

9. The exception involves the proposed merger of the Mid Cap Blend Fund, whose investment objective is "long-term capital appreciation," into the Growth & Income Fund, whose objective is "income and long-term capitalization." Income, however, does not always form a major portion of the Growth & Income Fund's total investment return. The Growth & Income Fund's income was approximately 1% of its average net assets for its two most recent fiscal years.

10. The investment objective of each Fund is non-fundamental.

11. In the case of two of the mergers ("Clone Mergers"), the Acquiring Fund