100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 1–12998. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4173 Filed 3–22–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27264; File No. 812–13253]

SBL Fund and Security Management Company, LLC

March 16, 2006.

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

ACTION: Notice of Application for Exemption under Section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Applicants: SBL Fund (''SBL'') and Security Management Company, LLC (''SMC'') (collectively, ''Applicants'').

Summary of Application: Applicants seek an order to permit shares of SBL and shares of any other existing or future investment company that is designed to fund insurance products and for which SMC, or any of its affiliates, may serve as investment manager, investment adviser, sub-adviser, administrator, manager, principal underwriter or sponsor (SBL and such other investment companies being hereinafter referred to, collectively, as ''Insurance Investment Companies''), or permit shares of any current or future series of any Insurance Investment Company (''Insurance Fund''), to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''); (3) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (4) any insurance company general accounts that are permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5.

Filing Date: The application was filed on December 28, 2005 and amended and restated on March 1, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 on the application by writing to the Secretary of the SEC 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 April 10, 2006 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Amy Lee, Associate General Counsel and Vice President, Security Benefit Corporation, One Security Benefit Place, Topeka, Kansas 66636–0001.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (202–551–8090).

Applicants' Representations

1. SBL is a Kansas corporation organized on May 26, 1977 and is registered as an open-end management investment company under the 1940 Act. SBL is a series company currently comprising eighteen (18) series (the ''Insurance Funds''). Additional series of SBL and classes of additional Insurance Funds may be established in the future.

2. SMC serves as SBL's investment adviser. SMC is controlled by its members, Security Benefit Life Insurance Company (''SBLIC'') and Security Benefit Corporation (''SBC''). SBLIC, a Kansas stock life insurance company, is controlled by SBC. SBC is wholly-owned by Security Mutual Holding Company, which is in turn controlled by SBLIC policyholders. Pursuant to investment subadvisory agreements, SMC retains a sub-adviser for many Insurance Funds. Each sub-adviser is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940.

3. SBL currently offers shares of the Insurance Funds only to separate accounts of affiliated insurance companies in order to fund benefits under flexible premium variable annuity contracts and variable life insurance policies. In the future, the Insurance Investment Companies intend to offer shares of the Insurance Funds to (a) separate accounts of affiliated and unaffiliated insurance companies in order to fund variable annuity contracts and variable life insurance contracts (collectively, ''Separate Accounts''); (b) Qualified Plans; (c) any investment manager to an Insurance Fund and affiliates thereof that is permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (collectively, the ''Manager''); and (d) any insurance company general accounts that are permitted to hold shares of an Insurance Fund consistent with the requirements of Treasury Regulation 1.817–5 (''General Accounts'').

4. Insurance companies whose Separate Account(s) may now or in the future own shares of the Insurance Funds are referred to herein as ''Participating Insurance Companies.'' The Participating Insurance Companies have established or will establish their own separate accounts and design their own variable contracts. Each Participating Insurance Company has or will have the legal obligation to satisfy

[5] 17 CFR 200.30–3(a)(1).

all applicable requirements under both state and federal law. Participating Insurance Companies may rely on Rules 6e–2 and 6e–3(T), although some Participating Insurance Companies, in connection with variable life insurance contracts, may rely on individual exemptive orders as well.

5. The Insurance Investment Companies intend to offer shares of the Insurance Funds directly to Qualified Plans outside of the separate account context. Qualified Plans may choose any of the Insurance Funds that are offered as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given an investment choice depending on the terms of the Plan itself. Shares of any of the Insurance Funds sold to such Qualified Plans would be held or deemed to be held by the trustee(s) of said Plans. Certain Qualified Plans, including Section 403(b)(7) Plans and Section 408(a) Plans, may vest voting rights in Plan participants instead of Plan trustees. Exercise of voting rights by participants in any such Qualified Plans, as opposed to the trustees of such Plans, cannot be mandated by the Applicants. Each Plan must be administered in accordance with the terms of the Plan and as determined by its trustee or trustees.

6. Shares of each Insurance Fund also may be offered to the Manager or to General Accounts, in reliance on regulations issued by the Treasury Department (Treas. Reg. 1.817–5) that established diversification requirements for variable annuity and variable life insurance contracts (''Treasury Regulations''). Treasury Regulation 1.817–5(f)(3)(ii) permits such sales as long as the return on shares held by the Manager or General Accounts is computed in the same manner as for shares held by the Separate Accounts, and the Manager or the General Accounts do not intend to sell to the public shares of the Insurance Investment Company that they hold. An additional restriction is imposed by the Treasury Regulations on sales to the Manager, who may hold shares only in connection with the creation or management of the Insurance Investment Company. Applicants anticipate that sales in reliance on these provisions of the Treasury Regulations generally will be made to the Manager for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder (including any comparable provisions of a permanent rule that replaces Rule 6e–3(T)), to the extent necessary to permit shares of each Insurance Investment Company to be offered and sold to, and held by: (1) Separate Accounts funding variable annuity contracts and scheduled premium and flexible premium variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (2) Qualified Plans; (3) any Manager to an Insurance Fund; and (4) General Accounts.

2. Section 6(c) authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the 1940 Act and/or of any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account organized as a unit investment trust (''Trust Account''), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to an insurance company by Rule 6e–2(b)(15) are available only where each registered management investment company underlying the Trust Account (''underlying fund'') offers its shares ''*exclusively* to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company * * *.'' (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any affiliated life insurance company. The use of a common underlying fund as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common underlying fund as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as ''shared funding.'' Moreover, because the relief under Rule 6e–2(b)(15) is available only where shares are offered *exclusively* to variable life insurance separate accounts, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to General Accounts, Qualified Plans or the Manager.

4. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more underlying funds which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are

offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts.

5. The relief provided by Rule 6e–3(T) is not relevant to the purchase of shares of the Insurance Investment Companies by Qualified Plans, the Manager or General Accounts. However, because the relief granted by Rule 6e–3(T)(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Insurance Investment Companies are also to be sold to Qualified Plans, the Manager or General Accounts. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to an underlying fund's ability to sell its shares to such purchasers. It is only because some of the Separate Accounts that may invest in the Insurance Investment Companies may themselves be investment companies that rely upon Rules 6e–2 and 6e–3(T) and wish to continue to rely upon the relief provided in those Rules, that the Applicants are applying for the requested relief. If and when a material irreconcilable conflict arises in the context of the application between the Separate Accounts or between Separate Accounts on the one hand and Qualified Plans, the Manager or General Accounts on the other hand, the Participating Insurance Companies, Qualified Plans, the Manager and the General Accounts must take whatever steps are necessary to remedy or eliminate the conflict, including eliminating the Insurance Funds as eligible investment options. Applicants have concluded that investment by the Manager or the inclusion of Qualified Plans and General Accounts as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. However, Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans, Manager or General Accounts arose, the Qualified Plans, Manager or General Accounts, unlike the Separate Accounts, can simply redeem their shares and make alternative investments. By contrast, insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Applicants thus argue that allowing the Manager, General Accounts or Qualified Plans to invest directly in the Insurance Investment Companies should not increase the opportunity for conflicts of interest.

6. Applicants assert that the Treasury Regulations made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by separate accounts of insurance companies in connection with their variable life insurance contracts. Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''), imposes certain diversification standards on the underlying assets of separate accounts funding variable annuity contracts and variable life contracts. In particular, the Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the separate account investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. The Treasury Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Treasury Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

7. Applicants also assert that the Treasury Regulations contain another exception that permits the Insurance Funds to sell shares to General Accounts or the Manager subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i), (ii)).

8. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by a Qualified Plan, the investment company's investment manager or its affiliates or General Accounts without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, the sale of shares of the same investment company to separate accounts through which variable life insurance contracts are issued, to Qualified Plans, to the investment company's investment manager and its affiliates or General Accounts (collectively, ''eligible shareholders'') could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

9. Paragraph (3) of Section 9(a) of the 1940 Act provides, among other things, that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (a)(2). Rule 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying management investment company. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment manager or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance

company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it is also unnecessary to apply Section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Funds as the funding medium for variable contracts. There is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed funding or shared funding and sales to Qualified Plans, the Manager or General Accounts. Those Participating Insurance Companies are not expected to play any role in the management or administration of the Insurance Funds. Those individuals who participate in the management or administration of the Insurance Funds will remain the same regardless of which separate accounts, insurance companies, Qualified Plans or General Accounts use the Insurance Funds. Therefore, applying the monitoring requirements of Section 9(a) because of investment by separate accounts of other Participating Insurance Companies would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners and Plan participants. Moreover, the relief requested should not be affected by the sale of shares of the Insurance Investment Companies to Qualified Plans, the Manager or General Accounts. The insulation of the Insurance Investment Companies from those individuals who are disqualified under the 1940 Act remains in place. Because Qualified Plans, the Manager, and General Accounts are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

10. Sections 13(a), 15(a), and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to underlying fund shares held by a separate account. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide partial exemptions from those sections to permit the insurance company to disregard the voting instructions of its contract owners in certain limited circumstances. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such underlying funds to make (or refrain from making) certain investments that would result in changes in the subclassification or investment objectives of such underlying funds or to approve or disapprove any contract between an underlying fund and its investment manager, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any change in such underlying fund's investment policies, principal underwriter, or any investment manager (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of Rules 6e–2 and 6e–3(T)).

11. Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract; it has important elements unique to insurance contracts; and it is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission therefore deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; therefore, Rule 6e–3(T)'s corresponding provisions presumably were adopted in recognition of the same factors. State insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts. Insurers generally assume both mortality and expense risks under variable annuity contracts. Therefore, variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. The Commission staff has not addressed the general issue of state insurance regulators' authority in the context of variable annuity contracts, and has not developed a single comprehensive exemptive rule for variable annuity contracts.

12. Applicants assert that the Insurance Investment Companies' sale of shares to Qualified Plans, the Manager or General Accounts will not have any impact on the relief requested herein in this regard. Shares of the Insurance Funds sold to Qualified Plans would be held by the trustees of such Plans. The exercise of voting rights by Qualified Plans, whether by the trustees, by participants, by beneficiaries, or by investment managers engaged by the Plans, does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts. With respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Plan participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different states does not create a significantly different or enlarged problem.

14. Applicants further assert that shared funding by unaffiliated Participating Insurance Companies is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled

in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of an insurance company to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, a particular Participating Insurance Company's disregard of voting instructions nevertheless could conflict with the majority of contract owner voting instructions. The Participating Insurance Company's action could arguably be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the contract owners' voting instructions should prevail, and could either preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at an Insurance Investment Company's election, to withdraw its separate account's investment in that Insurance Investment Company, and no charge or penalty would be imposed as a result of such withdrawal.

16. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, the Manager or General Accounts. The transfer agent(s) for the Insurance Investment Companies will inform each shareholder, including each separate account, each Qualified Plan, the Manager and each General Account, of its share ownership, in an Insurance Investment Company. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement. Investment by Qualified Plans or General Accounts in any Insurance Investment Company will similarly present no conflict. The likelihood that voting instructions of insurance company contract owners will ever be disregarded or the possible withdrawal referred to immediately above is extremely remote and this possibility will be known, through prospectus disclosure, to any Qualified Plan or General Account choosing to invest in an Insurance Fund. Moreover, even if a material irreconcilable conflict involving Qualified Plans or General Accounts arises, the Qualified Plans or General Accounts may simply redeem their shares and make alternative investments. Votes cast by the Qualified Plans or General Accounts, of course, cannot be disregarded but must be counted and given effect.

17. Applicants assert that there is no reason why the investment policies of an Insurance Fund would or should be materially different from what they would or should be if such Insurance Fund funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. Similarly, the investment strategy of Qualified Plans and General Accounts (i.e., long-term investment) coincides with that of variable contracts and should not increase the potential for conflicts. Each of the Insurance Funds will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product or other investor. There is no reason to believe that different features of various types of contracts will lead to different investment policies for different types of variable contracts. The sale and ultimate success of all variable insurance products depends, at least in part, on satisfactory investment performance, which provides an incentive for the Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the growth of the Insurance Investment Company. In addition, permitting mixed and shared funding will facilitate the establishment of additional series serving diverse goals. The broader base of contract owners and shareholders can also be expected to provide economic justification for the creation of additional series of each Insurance Investment Company with a greater variety of investment objectives and policies.

19. Applicants note that Section 817(h) of the Code is the only section in the Code where separate accounts are discussed. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5, which established diversification requirements for such portfolios, specifically permits, in paragraph (f)(3), among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. Therefore, neither the Code nor the Treasury Regulations nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Separate Accounts, the Manager and General Accounts all invest in the same underlying fund.

20. Applicants assert that the ability of the Insurance Investment Companies to sell their respective shares directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any variable contract, Qualified Plan, Manager or General Accounts. As noted above, regardless of the rights and benefits of contract owners or Plan participants, the Separate Accounts, Qualified Plans, the Manager and the General Accounts have rights only with respect to their respective shares of the Insurance Investment Companies. They can only redeem such shares at net asset value. No shareholder of any of the Insurance Investment Companies has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Applicants assert that permitting an Insurance Investment Company to sell its shares to the Manager in compliance with Treas. Reg. 1.817–5 will enhance Insurance Investment Company management without raising significant concerns regarding material irreconcilable conflicts. Applicants assert that the Insurance Investment Companies may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14a–2 under the 1940 Act. Accordingly, Applicants assert that such Insurance Investment Companies will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

22. Applicants assert that given the conditions of Treas. Reg. 1.817–5(i)(3) and the harmony of interest between an Insurance Investment Company, on the one hand, and its Manager or a Participating Insurance Company, on the other, little incentive for overreaching exists. Applicants assert that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants assert that permitting investment by the Manager will permit the orderly and efficient creation and operation of Insurance Investment Companies, and reduce the expense and uncertainty of using outside parties at the early stages of Insurance Investment Company operations.

23. Applicants assert that various factors have limited the number of insurance companies that offer variable contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain Participating Insurance Companies as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Investment Companies as a common investment medium for variable contracts, Qualified Plans and General Accounts would help alleviate these concerns, because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of SMC, or any other investment manager to an Insurance Fund, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Investment Companies available for mixed and shared funding and permitting the purchase of Insurance Investment Company shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation. Mixed and shared funding also may benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Insurance Investment Companies. This may benefit variable contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Insurance Investment Companies, or by making the addition of new Insurance Funds more feasible.

Applicants' Conditions

Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (''Board'') of each Insurance Investment Company shall consist of persons who are not ''interested persons'' of the Insurance Investment Company, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (i) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (ii) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor the respective Insurance Investment Company for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts, participants of Qualified Plans, the Manager or General Accounts investing in that Insurance Investment Company, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any Insurance Fund are being managed; (v) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, Plan trustees, or Plan participants; (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (vii) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Investment Company (''Participating Qualified Plan''), any Participating Insurance Company (on their own behalf, as well as by virtue of any investment of general account assets in all Insurance Investment Companies), and the Manager (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each of the Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan that is a Participant to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in an Insurance Investment Company under their agreements governing participation in the Insurance Investment Company, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, if applicable, Plan participants.

4. If it is determined by a majority of the Board of an Insurance Investment

Company, or a majority of its Independent Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Qualified Plans shall, at their expense or, at the discretion of a Manager to an Insurance Investment Company, at that Manager's expense, and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Insurance Investment Company or any series therein and reinvesting such assets in a different investment medium (including another Insurance Fund, if any); (ii) in the case of Participating Insurance Companies, submitting the question of whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (iii) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Insurance Investment Company or any Insurance Fund and reinvesting those assets in a different investment medium; and (iv) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Insurance Investment Company's election, to withdraw its Separate Account's investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Investment Company, to withdraw its investment in the Insurance Investment Company, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Investment Company, and these responsibilities will be carried out with a view only to the interests of the contract owners or, as applicable, Plan participants.

For the purposes of this Condition (4), a majority of the Independent Board Members shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Investment Company or its Manager be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan shall be required by this Condition (4) to establish a new funding medium for such Qualified Plan if (i) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer or (ii) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered Separate Account for so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such Participating Insurance Companies will vote shares of each Insurance Fund held in their registered Separate Accounts in a manner consistent with voting instructions timely received from such contract owners. Each Participating Insurance Company will vote shares of each Insurance Fund held in its registered Separate Accounts for which no timely voting instructions are received, as well as shares held by its General Accounts, in the same proportion as those shares for which voting instructions are received. Participating Insurance Companies shall be responsible for assuring that each of their registered Separate Accounts investing in an Insurance Investment Company calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Investment Company's shares and to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in an Insurance Investment Company shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Insurance Investment Company. Each Plan will vote as required by applicable law and governing Plan documents.

7. An Insurance Fund will make its shares available under a variable contract and/or Qualified Plans at or about the same time it accepts any seed capital from any Manager or any General Account of a Participating Insurance Company.

8. An Insurance Investment Company will notify all Participating Insurance Companies and Qualified Plans that disclosure regarding potential risks of mixed and shared funding may be appropriate in prospectuses for any of the Separate Accounts and in Plan documents. Each Insurance Investment Company will disclose in its prospectus that: (i) Shares of the Insurance Investment Company are offered to insurance company Separate Accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans and General Accounts; (ii) due to differences of tax treatment or other considerations, the interests of various contract owners participating in the Insurance Investment Company and the interests of Qualified Plans or General Accounts investing in the Insurance Investment Company might at some time be in conflict; and (iii) the Board will monitor the Insurance Investment Company for any material conflicts and determine what action, if any, should be taken.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any

provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then each Insurance Investment Company and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. Each Insurance Investment Company will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of that Insurance Investment Company), and in particular each Insurance Investment Company will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although SBL is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

13. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

14. If a Qualified Plan should become an owner of 10% or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are 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.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53510; File No. SR–Amex–2006–24]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Adoption of a Licensing Fee for Options on the First Trust Morningstar Dividend Leaders Index Fund Shares

March 17, 2006.

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 March 14, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 modify its Options Fee Schedule by adopting a per contract license fee for the orders of specialists, registered options traders (''ROTs''), firms, non-member market makers, and broker-dealers in connection with options transactions in the First Trust Morningstar Dividend Leaders Index Fund (symbol: FDL). The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at the principal office of Amex, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Amex proposes to adopt a per contract licensing fee for options on FDL. This fee change will be assessed on members commencing March 15, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain exchange-traded funds (''ETFs''), such as FDL. This requirement to pay an index license fee to a third party is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).