

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28321; File No. 812- 13457]

Minnesota Life Insurance Company, et al.; Notice of Application

June 26, 2008

Agency: The Securities and Exchange Commission (“Commission”).

Action: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the “1940 Act”), granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

Applicants: Minnesota Life Insurance Company (“Minnesota Life”), Variable Annuity Account (“Separate Account”), and Securian Financial Services, Inc. (“SFS”) (collectively, “Applicants”).

Summary of Application: Applicants seek an order pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary to permit recapture of certain bonuses (“Credit Enhancements”) applied to cumulative net purchase payments that reach certain aggregate amounts in accordance with the formula described in the application, made under (i) new deferred variable annuity contracts and certificates, including data pages, riders and endorsements, described in the application (the “New Contracts”) and under (ii) any deferred variable annuity contracts and certificates, including data pages, riders and endorsements, that Minnesota Life may issue in the future (the “Future Contracts”) through the Separate Account and any other separate accounts of Minnesota Life and its successors in interest (the “Future Accounts”), provided that any such Future Contracts are substantially similar in all material respects to the New Contracts (New Contracts and Future Contracts referred to collectively as the “Contracts”). Applicants also request that the exemptive relief extend to any Financial Industry Regulatory Authority

(“FINRA”) member broker-dealers controlling, controlled by, or under common control with any Applicant, whether existing or created in the future, that in the future, may act as principal underwriter for the Contracts (“Future Underwriters”). Applicants would recapture Credit Enhancements previously applied to purchase payments under the New Contracts in the following circumstances: (1) in the event a contract owner exercises his or her right to cancellation/“free look” under the New Contract; (2) if the Credit Enhancements were added to the contract within 12 months prior to the date of death of the contract owner (unless the New Contract is continued under the surviving spouse continuation option); and (3) if the Credit Enhancements were added to the contract within 12 months prior to the date of annuitization or partial annuitization of the contract. The requested relief would also apply to any Future Contract funded by the Separate Account or Future Accounts, provided that such Future Contract is substantially similar in all material respects to the New Contract.

Filing Date: The application was filed on November 21, 2007, and amended on June 24, 2008.

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 July 21, 2008, 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 may request notification of a hearing by writing to the Secretary of the Commission.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, c/o Michael P. Boyle, Senior Counsel, Minnesota Life Insurance

Company, 400 Robert Street North, St. Paul, Minnesota 55101.

For Further Information Contact: Ellen J. Sazzman, Senior Counsel, at (202) 551-6762, or Harry Eisenstein, Branch Chief, at (202) 551-6795, Office of Insurance Products, Division of Investment Management.

Supplementary Information: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549 ((202) 551-8090).

Applicants' Representations:

1. Minnesota Life is a Minnesota stock life insurance company organized under the laws of Minnesota. All of the shares of the voting stock of Minnesota Life are owned by a second tier intermediate stock holding company named "Securian Financial Group, Inc.," which in turn is a wholly-owned indirect subsidiary of Minnesota Mutual Companies, Inc.

2. Minnesota Life is authorized to sell insurance and annuities in all states (except New York), and the District of Columbia. For purposes of the 1940 Act, Minnesota Life is the depositor and sponsor for the Separate Account. Minnesota Life also serves as depositor for several other separate accounts. Minnesota Life may establish one or more additional Future Accounts for which it will serve as depositor.

3. The Separate Account is a segregated investment account under Minnesota law. Under Minnesota law, the assets of the Separate Account attributable to the Contracts and any other variable annuity contracts through which interests in the Separate Account are issued are owned by Minnesota Life, but are held separately from all other assets of Minnesota Life, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Separate Account. Consequently, such assets are not chargeable with liabilities arising out of any

other business that Minnesota Life may conduct. Income, gains and losses, realized or unrealized, from each sub-account of the Separate Account, are credited to or charged against that sub-account without regard to any other income, gains or losses of Minnesota Life. The Separate Account is a “separate account” as defined by Section 2(a)(37) of the 1940 Act, is registered with the Commission as a unit investment trust (File No. 811-4294), and interests in the Separate Account offered through the Contracts are registered under the Securities Act of 1933 on Form N-4, File No. 333-111067.

4. The Separate Account is divided into a number of sub-accounts. Each sub-account invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type, open-end management investment companies. The assets of the Separate Account support one or more varieties of variable annuity contracts, including the New Contract. Minnesota Life may issue Future Contracts through the Separate Account. Minnesota Life also may issue Contracts through Future Accounts.

5. SFS is a wholly-owned subsidiary of Securian Financial Group, Inc. SFS serves as the principal underwriter of Minnesota Life separate accounts registered as unit investment trusts under the 1940 Act, including the Separate Account, and is the distributor of variable life insurance policies and variable annuity contracts issued through such separate accounts, including the Contracts. SFS is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of FINRA. SFS may act as principal underwriter for Future Accounts of Minnesota Life and as distributor for Future Contracts.

6. The New Contracts are deferred combination variable and fixed annuity contracts that Minnesota Life may issue to individuals on a “non-qualified” basis or in connection with certain types of retirement plans that receive favorable federal income tax treatment under the

Internal Revenue Code of 1986, as amended (the “Code”). The New Contracts make available a number of sub-accounts of the Separate Account to which a contract owner may allocate net purchase payments and associated Credit Enhancement(s).

7. The New Contracts also offer fixed-interest allocation options under which Minnesota Life credits guaranteed rates of interest for various periods. These include several guaranteed term account options and the Minnesota Life general account. A market value adjustment may apply to the fixed-interest allocation options under the New Contracts in certain circumstances.

8. A contract owner’s initial purchase payment must be at least \$10,000 (unless a lower qualified plan limitation applies). Thereafter, a contract owner may choose the amount and frequency of purchase payments, except that the minimum subsequent purchase payment is \$500 (\$100 for automatic payment plans). A contract owner may make transfers of contract value among and between the sub-accounts and, subject to certain restrictions, among and between the sub-accounts and the fixed-interest allocation options at any time. Contract value is the sum of a contract owner’s values in the general account, guarantee periods of the guaranteed term account and sub-accounts of the Separate Account on any valuation date before the annuity commencement date.

9. The New Contracts offer a contract owner a variety of annuity payment options. The contract owner may annuitize any time. A contract owner may choose to annuitize his/her entire contract or only a portion of the contract value. If a deferred sales charge (“DSC”) would otherwise apply to New Contract withdrawals at the time of annuitization, the DSC will be waived for amounts applied to provide annuity payments. In the event of a contract owner’s (or the annuitant’s, if any contract owner is not an individual) death prior to annuitization, the beneficiary

may elect to receive the death benefit in the form of one of several annuity payment options instead of a lump sum.

10. The New Contracts have a DSC which is applicable on surrender and withdrawal of accumulation values as described more fully below. Credit Enhancements are not recaptured upon surrender or withdrawal.

11. If a contract owner withdraws contract value, Minnesota Life may deduct a DSC equal to a percentage of each purchase payment surrendered or withdrawn. The DSC is separately calculated and applied to each purchase payment at any time that the purchase payment (or part of the purchase payment) is surrendered or withdrawn. The amount of the DSC depends on how long a contract owner's purchase payment has been held under the New Contract. The DSC applicable to each purchase payment diminishes to zero over time as the purchase payment remains in the New Contract. The DSC does not apply in any circumstances under which Credit Enhancements will be recaptured.

12. The New Contracts offer a standard DSC schedule as follows:

<b>Contract Years Since Payment</b>	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8+
<b>Deferred Sales Charge</b>	8.0%	8.0%	7.0%	6.0%	6.0%	5.0%	4.0%	3.0%	0%

The DSC does not apply to:

- The annual free withdrawal amount (as discussed below).
- Amounts withdrawn to pay the annual maintenance fee, any transfer charge or any periodic charges for optional riders.
- Any amount attributable to recaptured Credit Enhancements.
- Amounts payable as a death benefit upon the death of the contract owner or the annuitant, if applicable.
- Amounts applied to provide annuity payments under an annuity option.

- Amounts withdrawn because of an excess contribution to a tax-qualified contract (including, for example, IRAs and tax sheltered annuities).
- The difference between any required minimum distribution due (according to Internal Revenue Service rules) on the New Contract and any annual free withdrawal amount allowed.
- A surrender or withdrawal requested any time after the first contract anniversary and if a contract owner meets the requirements of a qualifying confinement in a hospital or medical care facility.
- A surrender or withdrawal requested any time after the first contract anniversary and in the event that a contract owner is diagnosed with a terminal illness as described in the New Contract.
- A surrender or single withdrawal amount any time after the first contract anniversary if the unemployment waiver applies.
- If a certain optional living benefit is elected, withdrawals in a contract year if less than or equal to the limit specified for the benefit.

13. A contract year is defined as a period of one year beginning with the contract issue date and continuing up to, but not including, the next contract anniversary, or beginning with a contract anniversary and continuing up to, but not including, the next contract anniversary.

14. The amount withdrawn plus any DSC is deducted from the contract value. The amount of the DSC is determined from the percentages shown in the table above. For purposes of determining the amount of DSC, withdrawal amounts will be allocated to contract gain up to the free withdrawal amount, and then to purchase payments on a first-in, first-out, basis. The amount of the DSC is determined by: (a) calculating the number of years each purchase payment being withdrawn has been in the New Contract; (b) multiplying each purchase payment being withdrawn by the appropriate DSC percentage from the table; and (c) adding the DSC from all purchase payments calculated in (b). Unless otherwise instructed, the DSC will be deducted pro rata from all sub-accounts. The New Contract permits a contract owner to withdraw from his or her contract certain “free amounts” on an annual basis without imposition of the DSC. The annual free

withdrawal amount shall be equal to 10% of purchase payments not previously withdrawn and received by Minnesota Life during the current contract year, plus the greater of: (i) contract value less purchase payments not previously withdrawn as of the most recent contract anniversary; or (ii) 10% of the sum of purchase payments not previously withdrawn and still subject to the DSC, as of the most recent contract anniversary. The free withdrawal amount does not apply when a New Contract is surrendered.

15. Subject to state availability, a contract owner may elect to purchase optional living benefit riders. A contract owner may only elect a single living benefit on a New Contract. These include a minimum guaranteed income benefit rider, a guaranteed minimum withdrawal benefit rider, and two guaranteed living withdrawal benefit riders.

16. If a contract owner dies before the annuity start date, the New Contract provides for a death benefit payable to a beneficiary computed as of the date Minnesota Life receives written notice and due proof of death. The death benefit payable to the beneficiary depends on the death benefit option selected by the contract owner: the guaranteed minimum death benefit which is included as part of the base New Contract; or one of four optional death benefits.

17. Minnesota Life will credit the contract value allocated to the sub-accounts and the fixed-interest accounts with a Credit Enhancement when total cumulative net purchase payments reach certain aggregate levels. The term “cumulative net purchase payments” is equal to the total of all purchase payments applied to the contract less any amounts previously withdrawn from contract value. The amount of the Credit Enhancement to be added will be calculated as follows: (a) cumulative net purchase payments; multiplied by (b) the applicable Credit Enhancement percentage from the table below; minus (c) any Credit Enhancements previously applied to contract value.



Cumulative Net Purchase Payments	Credit Enhancement Percentage
\$250,000-\$499,999.99	0.25%
\$500,000-\$749,999.99	0.50%
\$750,000-\$999,999.99	0.75%
\$1,000,000 or more	1.00%

18. For example, an original purchase payment equal to \$251,000 is made to the Contract; Minnesota Life applies a Credit Enhancement equal to 0.25% of purchase payments (\$627.50) to the Contract. Subsequently, the contract owner requests a withdrawal from contract value of \$35,000 including applicable deferred sales charge. Cumulative net purchase payments are now equal to  $\$251,000 - \$35,000 = \$216,000$ . An additional purchase payment of \$300,000 is later added to the Contract, making cumulative net purchase payments equal to  $\$216,000 + \$300,000 = \$516,000$ . Applying the formula:  $\$516,000 \times 0.5\% = \$2,580$  less \$627.50 results in a Credit Enhancement added equal to \$1,952.50.

19. The Credit Enhancement amount is treated as earnings for purposes of federal taxes under the Contract. Minnesota Life will allocate the Credit Enhancement for the applicable purchase payment among the sub-accounts and fixed-interest accounts the contract owner selects in accordance with a contract owner's current purchase payment allocation instructions. Minnesota Life applies the Credit Enhancement to a contract owner's contract value either by "purchasing" accumulation units of an appropriate sub-account or adding to the contract owner's fixed-interest allocation option values. Minnesota Life reserves the right to increase or decrease the amount of the Credit Enhancement or discontinue the Credit Enhancement in the future. In such case Minnesota Life would seek any additional exemptive relief to the extent required.

20. Minnesota Life intends to recapture or retain the Credit Enhancements only in the following circumstances. First, Minnesota Life recaptures or retains 100% of the Credit Enhancements in the event that the contract owner exercises his or her cancellation right during the “free look” period. Second, Minnesota Life recaptures all of the Credit Enhancements added to the Contract within 12 months prior to the date of death of the contract owner (unless the Contract is continued under the surviving spouse benefit continuation option); any Credit Enhancement added to the Contract more than 12 months prior to the date of death would not be recaptured. Third, Minnesota Life will recapture all of the Credit Enhancements added to the Contract within 12 months prior to the annuitization date of the Contract. Any Credit Enhancement added to the Contract more than 12 months prior to the date of annuitization would not be recaptured. If only a partial annuitization were elected, a pro rata portion of the Credit Enhancements added to the Contract within 12 months of the annuitization date would be recaptured. So for example, if half the contract value were annuitized, half of the Credit Enhancements added within 12 months of the date of the annuitization would be recaptured.

21. Investment gains attributable to the Credit Enhancement will not be recaptured. Since Minnesota Life does not recapture the investment gain/loss attributable to the Credit Enhancement, only the dollar amount of the Credit Enhancement added to the Contract is recaptured in the circumstances described in the application.

22. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing Credit Enhancements accrue to the contract owner immediately. The initial value of such units belongs to the contract owner except in the limited circumstances of recapture. Second, decreases in the value of accumulation units representing Credit Enhancements do not diminish the dollar amount of

contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any contract owner's variable contract value (or the contract owner's interest in the Separate Account) that Minnesota Life needs to "recapture" to avoid anti-selection increases as variable contract value (or the contract owner's interest in the Separate Account) decreases. This has the potential to dilute somewhat the contract owner's interest in his/her Contract as compared to other contract owners who do not trigger the recapture provisions.

23. Finally, because it is not administratively feasible to track the Credit Enhancements in the Separate Account which may still be subject to recapture, Minnesota Life deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Separate Account. As a result, the daily mortality and expense risk charge, and any optional benefit charges paid by any contract owner may be greater than that which he or she would pay without the Credit Enhancement. In other words, any asset based fees taken on a dollar amount that is subsequently recaptured, cannot be refunded to contract owners.

24. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions set forth below from Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to permit Applicants to recapture Credit Enhancements previously applied to purchase payments under the New Contracts: (1) in the event a contract owner exercises his or her right to cancellation/"free look" under the New Contract; (2) if the Credit Enhancements were added to the Contract within 12 months prior to the date of death of the contract owner (unless the New Contract is continued under the surviving spouse continuation option); and (3) if the Credit Enhancements were added to the Contract within 12 months prior to the date of annuitization or partial annuitization of the Contract. The requested relief would also apply to any Future Contract

funded by the Separate Account or Future Accounts provided such Future Contract is substantially similar in all material respects to the New Contract.

25. The relief sought in this Application is intended to permit Minnesota Life with respect to the New Contract to: (i) deduct any Credit Enhancements from amounts returned after a contract owner exercises his or her right to cancel the contract during the free-look period; (ii) deduct from any death benefit the amount of any Credit Enhancements applied during the 12 months prior to the date of the contract owner's death; and (iii) deduct from any annuitization benefit the amount of any Credit Enhancements applied during the 12 months prior to the date of annuitization or partial annuitization.

Applicants' Legal Analysis:

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

2. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the "...contract is a redeemable security; and...[t]he insurance company complies with Section 26(e)...".

3. Section 2(a)(32) defines a “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 proportionate share of the issuer’s current net assets, or the cash equivalent thereof.

4. Rule 22c-1 imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. In pertinent part, Rule 22c-1 prohibits a registered investment company issuing any redeemable security, a person designated in such issuer’s prospectus as authorized to consummate transactions in any 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.

5. Applicants submit that to the extent that the recapture of the Credit Enhancement arguably could be seen as a discount from the net asset value, or arguably could be viewed as resulting in the payment to a contract owner of less than the proportional share of the issuer’s net assets, in violation of Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder, the Credit Enhancement recapture would then trigger the need for relief absent some exemption from the 1940 Act. Rule 6c-8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from Sections 2(a)(32), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. Applicants assert, however, that the Credit Enhancement recapture is not a sales load but a recapture of a Credit Enhancement previously applied to a contract owner’s purchase payments. Minnesota Life

provides the Credit Enhancement from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, Minnesota Life contemplates that a contract owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. Minnesota Life contends that it designed the Contract so that it would recover its costs (including the Credit Enhancements) over an anticipated duration while a Contract is in force. If a contract owner withdraws his or her money during the free look period, the contract owner dies shortly after Credit Enhancements are applied, or the Contract is annuitized before this anticipated period, Minnesota Life asserts it must recapture the Credit Enhancement subject to recapture in order to avoid a loss.

6. Applicants submit that the proposed recapture of the Credit Enhancement would not violate Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act or Rule 22c-1 thereunder. Minnesota Life would grant Credit Enhancements out of its general account assets. Applicants submit that a contract owner's interest in the Credit Enhancements does not vest until the expiration of the free look period and the expiration of the 12-month period following the application of a Credit Enhancement to the contract owner's Contract; until such time, Minnesota Life generally retains the right to and interest in each contract owner's contract value representing the dollar amount of any unvested Credit Enhancement amounts. Therefore, Applicants submit if Minnesota Life recaptures any Credit Enhancements or part of a Credit Enhancement in the circumstances described above, it would merely be retrieving its own assets. Applicants further submit that to the extent that Minnesota Life may grant and recapture Credit Enhancements in connection with variable contract value, it would not, at either time, deprive any contract owner of his or her then proportionate share of the Separate Account's assets.

7. Applicants further submit that the operation of the proposed Credit Enhancements would not violate Section 2(a)(32) or 27(i)(2)(A) of the 1940 Act because the recapture of Credit Enhancements would not, at any time, deprive a contract owner of his or her proportionate share of the current net assets of the Separate Account. Section 2(a)(32) defines a redeemable security as one “under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net asset value.” Applicants assert that taken together, these two sections of the 1940 Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, Applicants submit that the fact that the proposed Credit Enhancement provisions have a dynamic element that may cause the relative ownership positions of Minnesota Life and a contract owner to shift due to Separate Account performance would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the 1940 Act, Applicants seek exemptions from these two sections.

8. Minnesota Life’s granting of Credit Enhancements would have the result of increasing a contract owner’s contract value in a way that arguably could be viewed as the purchase of an interest in the Separate Account at a price below the current net asset value. Similarly, Minnesota Life’s recapture of any Credit Enhancements arguably could be viewed as the redemption of such an interest at a price above the current net asset value. If such is the case, then the Credit Enhancements arguably could be viewed as conflicting with Rule 22c-1. Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. Applicants also contend that the Credit Enhancements do not violate Rule 22c-1.

9. Rule 22c-1 was intended to eliminate or reduce, as far as was reasonably practicable: (1) 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 at a price above net asset value; or (2) other unfair results, including speculative trading practices. Applicants submit that the industry and regulatory concerns prompting the adoption of Rule 22c-1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares.

10. Applicants submit that the Credit Enhancements do not give rise to either of the two concerns that Rule 22c-1 was designed to address. First, Applicants contend that the proposed Credit Enhancements pose no such threat of dilution. A contract owner's interest in his or her contract value or in the Separate Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a Credit Enhancement does not reflect a reduction of that price. Instead, Minnesota Life would purchase with its general account assets, on behalf of the contract owner, an interest in the Separate Account equal to the Credit Enhancement. Because the Credit Enhancement will be paid out of the general account assets, not the Separate Account assets, Applicants submit that no dilution will occur as a result of the Credit Enhancement. Recaptures of Credit Enhancements result in a redemption of Minnesota Life's interest in a contract owner's contract value or in the Separate Account at a price determined based on the Separate Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will never exceed the amount that Minnesota Life paid from its general account for the Credit Enhancement. Similarly, although a contract owner is entitled to retain any



investment gains attributable to the Credit Enhancement, the amount of such gains would always be computed at a price determined based on net asset value.

11. Second, Applicants submit that speculative trading practices calculated to take advantage of backward pricing will not occur as a result of Minnesota Life's recapture of the Credit Enhancement. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was designed to prevent. More importantly, the Credit Enhancement recapture simply does not create the opportunity for speculative trading.

12. Applicants assert that the Credit Enhancement is generally beneficial to a contract owner. The recapture tempers this benefit somewhat, but unless the owner (1) exercises his or her right to cancel the contract during the "free look" period, or (2) Minnesota Life applies Credit Enhancements and a death benefit during the same 12-month period, or (3) Minnesota Life applies Credit Enhancements and a contract owner annuitizes during the same 12-month period, the contract owner retains the ability to avoid the Credit Enhancement recapture in the circumstances described in the application. While there would be a small downside in a declining market where the contract owner bears the downside risk of incurring losses attributable to the Credit Enhancements applied, it is the converse of the benefits a contract owner would receive on the Credit Enhancement amounts in a rising market because earnings on the Credit Enhancement amount vest with him or her immediately. Applicants submit that as any earnings on Credit Enhancements applied would not be subject to recapture and thus would be immediately available to a contract owner, over time this would increase the contract owner's share of contract value in the Separate Account more than it would have increased without the Credit Enhancements. Likewise any losses on Credit Enhancements would also not be subject to recapture and over time

would decrease the contract owner's share of contract value in the Separate Account by more than it would have decreased had the Credit Enhancements never been applied. Applicants submit that the Credit Enhancement recapture does not diminish the overall value of the Credit Enhancement.

13. Applicants assert that the Credit Enhancement recapture provision is necessary for Minnesota Life to offer the Credit Enhancement and prevent anti-selection – the risk that a contract owner would make significant purchase payments into the Contract solely to receive a quick profit from the Credit Enhancements and then withdraw his or her money. Applicants submit it would be unfair to Minnesota Life to permit a contract owner to keep his or her Credit Enhancement upon his or her exercise of the Contract's "free look" provision. Because no DSC applies to the exercise of the "free look" provision, individuals could purchase the contract with no intention of keeping it, and the contract owner could obtain a quick profit in the amount of the Credit Enhancement at Minnesota Life's expense by exercising that right in just a short period of time. Applicants submit it would also be unfair to Minnesota Life to permit a contract owner to keep his or her Credit Enhancements paid shortly before death or annuitization. Rather than spreading purchase payments over a number of years, a contract owner could knowingly make very large payments shortly before death or annuitization to obtain a quick profit in the amount of the Credit Enhancement thereby leaving Minnesota Life less time to recover the cost of the Credit Enhancement, to its financial detriment. Applicants further submit because no additional DSC applies upon death of a contract owner (or annuitant), a death shortly after the award of Credit Enhancements would afford a contract owner or a beneficiary a similar profit at Minnesota Life's expense. Finally Applicants submit that because no additional DSC applies upon annuitization, if a contract owner annuitizes his or her contract shortly after the award of the Credit Enhancement, such event would afford a contract owner a similar profit at Minnesota Life's expense.

14. Applicants submit that in the event of such profits to a contract owner or beneficiary, Minnesota Life could not recover the cost of granting the Credit Enhancements. This is because Minnesota Life intends to recoup the costs of providing the Credit Enhancement through the charges under the Contract, particularly the daily mortality and expense risk charge and through efficiencies associated with administering contracts with higher aggregate purchase payments. Applicants assert that if the profits described above are permitted, a contract owner could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount, and cost, of Credit Enhancements that Minnesota Life must provide. Therefore, the recapture provisions are a price of offering the Credit Enhancements. Applicants submit that Minnesota Life simply cannot offer the proposed Credit Enhancements without the ability to recapture those Credit Enhancements in the limited circumstances described the application.

15. Applicants state that the Commission's authority under Section 6(c) of the 1940 Act to grant exemptions from various provisions of the 1940 Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, Minnesota Life's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder with respect to the Contracts. Applicants submit that the exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed in the application,

the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. Applicants note that the Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus-type credits under variable annuity contracts.

16. Applicants represent that any Future Contracts will be substantially similar in all material respects to the New Contracts, but particularly with respect to the Credit Enhancements and recapture of Credit Enhancements and that each factual statement and representation about the Credit Enhancement feature will be equally true of any Future Contracts. Applicants also represent that each material representation made by them about the Separate Account and SFS will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in the Application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a member of FINRA.

17. Based upon the foregoing, Applicants submit that the recapture of the proposed Credit Enhancement involves none of the abuses to which provisions of the 1940 Act and rules thereunder are directed. The contract owner will always retain the investment experience attributable to the Credit Enhancement and will retain the principal amount in all cases except under the circumstances described herein. Further, Applicants assert that Minnesota Life should be able to recapture such Credit Enhancement to limit potential losses associated with such Credit Enhancements.

Conclusions:

Applicants submit that the exemptions requested are necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy

and provisions of the 1940 Act, and consistent with and supported by Commission precedent. Applicants also submit that the provisions for recapture of Credit Enhancements under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

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

Florence E. Harmon  
Acting Secretary