

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27960; File No. 812-13365]

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

August 30, 2007

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 credit enhancements (“Credit Enhancements”) applied to purchase payments made in consideration of certain deferred variable annuity contracts, including data pages, riders and endorsements, described herein that Minnesota Life intends to issue (the “Current Contracts”). Applicants also request that the exemptive relief extend to: (1) any deferred variable annuity contracts, including data pages, riders and endorsements, substantially similar to the Current Contracts that Minnesota Life may issue in the future (the “Future Contracts”) (Current Contracts and Future Contracts referred to collectively as the “Contracts”); (2) any other separate accounts of Minnesota Life and their successors in interest (“Future Accounts”) that support the Contracts; and (3) any National Association of Securities Dealers, Inc. (“NASD”) 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”). The circumstances under which the Contracts would allow the recapture of all or a portion of certain Credit Enhancements (previously applied to premium payments) are where the Credit Enhancements were applied and: (1) the Contract owner exercises his or her right to cancellation or “free look” right to surrender the Contract; (2) in the event of death within twelve months of the Credit Enhancement being applied (unless the Contract is continued under the surviving spouse benefit continuation option); or (3) partial withdrawal, annuitization, or surrender of the Contract in the first seven Contract Years, (pursuant to the Credit Enhancement recapture formula set forth below). A “Contract Year” is 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.

Filing Date: The application was filed on February 15, 2007, and amended on August 27, 2007.

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 September 24, 2007, 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 SEC'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. Minnesota Life was formerly known as the Minnesota Mutual Life Insurance Company ("Minnesota Mutual"), a mutual life insurance company organized in 1880 under the laws of Minnesota. Effective October 1, 1998, Minnesota Mutual reorganized by forming a mutual insurance holding company named "Minnesota Mutual Companies, Inc." Minnesota Mutual continued its corporate existence following conversion to a Minnesota stock life insurance company named Minnesota Life Insurance Company. 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 subsidiary of a first tier intermediate stock holding company named "Securian Holding Company." Securian Holding Company is a wholly-owned subsidiary of the ultimate parent, 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. Minnesota Life established the Separate Account as a segregated investment account under Minnesota law on September 10, 1984. Under Minnesota law, the assets of the Separate Account attributable to the Separate Account 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 (described below), 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. 811-5626), and interests in the Separate Account offered through the Contracts are registered under the Securities Act of 1933 on Form N-4.

4. The Separate Account currently 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. 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., which is in turn a wholly-owned subsidiary of Securian Holding Company, which is a wholly-owned subsidiary of Minnesota Mutual Companies, 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 the NASD. SFS may act as principal underwriter for Future Accounts of Minnesota Life and as distributor for Future Contracts. Future Underwriters also may act as principal underwriter for the Accounts and as distributor for any of the Contracts.

6. The 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 Contracts make available a number of sub-accounts of the Separate Account to which an owner may allocate net premium payments and associated bonus credits, called Credit Enhancement(s), which are described below.

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

8. An owner’s initial purchase payment must be at least \$10,000. Thereafter, an owner may choose the amount and frequency of purchase payments, except that the minimum subsequent purchase payment is \$500 (\$100 for automatic payment plans). An 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 DCA fixed accounts, Fixed Accounts, 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 Contracts offer an owner a variety of annuity payment options. The owner may annuitize any time following the second contract anniversary. If a deferred sales charge would otherwise apply to Contract withdrawals at the time of annuitization, the deferred sales charge will be waived for amounts applied to provide annuity payments. In the event of an owner's (or the annuitant's, if any 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. Minnesota Life may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon annuitization of the Contract, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of \$35 that Minnesota Life deducts from the Contract's accumulation value on each contract anniversary and upon a full surrender of a Contract if the greater of: (a) Contract Value or (b) purchase payments less withdrawals, is less than \$75,000. A daily mortality and expense risk charge is deducted from the assets of the Separate Account at a rate described in the Contract. In addition, the mortality and expense risk charge is reduced after Contract Year 9 and later. As a result, the mortality and expense risk charge for the base Contract is 1.70% annually for Contract Years 1 through 9; to 1.10% for Contract Years 10 and after. A daily administrative charge is deducted from the assets of the Separate Account at an annual rate of 0.15%. The Contracts provide for a charge of \$10 for each transfer of Contract Value in excess of twelve transfers per Contract Year (which charge Minnesota Life currently waives). The Contracts have a deferred

sales charge which is applicable on surrender and withdrawal of accumulation values as described more fully below. A quarterly charge may be assessed depending on the type of optional living benefit elected, if any.

11. Minnesota Life does not deduct sales load from purchase payments before allocating them to a Contract owner’s Contract Value. If a Contract owner withdraws Contract Value, Minnesota Life may deduct a contingent deferred sales charge, which is referred to as a deferred sales charge (“DSC”). The DSC is 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 Contract. The DSC applicable to each purchase payment diminishes to zero over time as the purchase payment remains in the Contract.

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

Contract Years Since Payment	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	9+
Deferred Sales Charge	6.5%	6.5%	5.9%	5.9%	5.9%	5%	4%	3%	2%	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 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 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 Contract.

13. 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 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. During the first Contract Year, the annual free withdrawal amount is 10% of purchase payments, measured at the time of withdrawal, less any prior withdrawals made in that Contract Year. Thereafter, the annual free withdrawal amount is equal to 10% of the sum of purchase payments received by Minnesota Life within 9 years and not previously withdrawn as of the most recent Contract Anniversary. The free withdrawal amount does not apply when a Contract is surrendered.

14. Subject to state availability, an owner may elect to purchase optional living benefit riders. The optional Guaranteed Income Provider Benefit (the “GIPB Rider”) is a minimum

guaranteed income benefit rider. It guarantees that a minimum amount of annuity income will be available to the owner, regardless of fluctuating market conditions, if the owner annuitizes his or her Contract on or after the rider's exercise date. The minimum guaranteed amount of annuity income will depend on the amount of purchase payments made to the Contract and any Credit Enhancements applied to the Contract, if applicable, during the specified number of Contract Years after the owner purchases the GIPB Rider; how the owner allocates the Contract Value among the sub-accounts and fixed-interest allocations; and any withdrawals and transfers the owner makes while the GIPB Rider is in effect. A daily charge for the GIPB Rider is deducted from the assets of the Separate Account at an annual rate of 0.50%. The charge does not apply after annuitization.

15. The optional guaranteed minimum withdrawal benefit rider (the "GMWB Rider") guarantees that a certain amount may be withdrawn annually regardless of market performance and even if the Contract Value is reduced to zero. The Contract offers the guaranteed withdrawal amount until the GMWB Base (as defined in the GMWB Rider) is completely recovered. The GMWB Rider is subject to conditions and limitations. Minnesota Life will deduct a maximum annual charge of 1.00% (currently, 0.50%) of the GMWB Base (as set forth in the GMWB Rider). One quarter of the GMWB Rider charge will be taken on the GMWB effective date and at the end of every three months thereafter. The charge does not apply after annuitization.

16. The optional Guaranteed Living Withdrawal Benefit Rider ("GLWB Rider") also guarantees that a certain amount may be withdrawn annually regardless of market performance and even if the Contract Value is reduced to zero. However, the GLWB Rider guarantees the withdrawal amounts for the life of the Contract owner. The GLWB Rider is subject to conditions and limitations. Minnesota Life will deduct an annual charge of 0.60% of Contract Value. One

quarter of the GLWB Rider charge will be taken on the GLWB Rider effective date and at the end of every three months thereafter. The charge does not apply after annuitization.

17. If an owner dies before the annuity start date, the 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 owner. The options are the guaranteed minimum death benefit which is included as part of the base Contract; or one of two optional death benefits: the Highest Anniversary Value death benefit; or the Premier Death Benefit, as each is described below. In the future, Minnesota Life may offer other death benefit riders.

18. The guaranteed minimum death benefit is part of the base Contract and is the “standard” death benefit. It equals the greater of the: (1) Contract Value; or, (2) the total purchase payments and Credit Enhancements, adjusted pro rata for withdrawals and transfers, less total Credit Enhancements applied within twelve months prior to death. The charge associated with this base Contract death benefit is built into the mortality and expense risk charge for the Contract.

19. The Highest Anniversary Value (HAV) death benefit is an optional death benefit which may be elected. It equals the greater of the: (1) Contract Value; and, (2) the previous highest anniversary value adjusted for any purchase payments and Credit Enhancements, reduced pro rata for withdrawals and transfers, less Credit Enhancements applied within twelve months prior to death. The daily charge for the HAV death benefit is the annual rate of 0.15% of the variable Contract Value and is deducted from amounts held in the Separate Account. The charge does not apply after annuitization.

20. The Premier Death Benefit equals the greater of: (1) the HAV death benefit value or (2) the 5% Death Benefit Increase Value. The 5% Death Benefit Increase Value is equal to (on

the date the death benefit is determined) the sum of: (a) the portion of the Contract Value in any fixed account and guaranteed term account; and (b) purchase payments and transfers into the Separate Account adjusted pro rata for withdrawals or transfers out of the Separate Account, accumulated to the earlier of the date Minnesota Life receives due proof of death or the Contract Anniversary following the Contract owner's eightieth birthday at an interest rate of 5% compounded annually. The sum of (a) and (b) is reduced by any Credit Enhancements granted within the previous 12 months. The 5% Death Benefit Increase Value shall not exceed 200% of the sum of purchase payments adjusted pro rata for any amounts previously withdrawn. The charge for the Premier Death Benefit is the annual rate of 0.35% of the variable Contract Value and is deducted from amounts held in the Separate Account. This charge does not apply after annuitization.

21. The Contract is a "bonus" annuity. Minnesota Life will credit the Contract value allocated to the sub-accounts and the fixed-interest accounts with a Credit Enhancement in an amount equal to a percentage of each purchase payment made during the first Contract Year. The Credit Enhancement amount is treated as earnings for federal tax purposes. Minnesota Life allocates the Credit Enhancement for the applicable purchase payment among the sub-accounts and fixed-interest accounts the owner selects in proportion to the purchase payment allocations. Minnesota Life applies the credit to an owner's Contract Value either by "purchasing" accumulation units of an appropriate sub-account or adding to the owner's fixed-interest allocation option values. The Credit Enhancement equals 7% of each purchase payment made in the first Contract Year. Minnesota Life reserves the right to increase or decrease the amount of the Credit Enhancement or discontinue the Credit Enhancement in the future.

22. Minnesota Life recaptures or retains the Credit Enhancements in several circumstances. First, Minnesota Life recaptures or retains 100% of the Credit Enhancements in the event that the owner exercises his or her cancellation right during the “free look” period. Second, Minnesota Life recaptures the Credit Enhancements applied to purchase payments made within twelve months of the date a death benefit is paid (unless the Contract is continued under the surviving spouse benefit continuation option). Third, Minnesota Life also will recapture part or all of the applicable Credit Enhancement upon surrender, withdrawal or where amounts are applied to provide annuity payments, within seven years of the Contract effective date.

23. In the event of a surrender, withdrawal or where amounts are applied to provide annuity payments, within seven years of the Contract effective date, Minnesota Life will recapture or deduct an amount equal to a percentage of the Credit Enhancement(s) not yet vested. On each Contract Anniversary, an amount equal to 14.2857% or one-seventh (1/7) of the Credit Enhancement(s) not previously recaptured will vest. All Credit Enhancements will be fully vested at the end of seven years from the Contract effective date. The value of the Credit Enhancement(s) only fully vests, or belongs irrevocably to the owner, when the recapture period for the Credit Enhancement expires. The following table summarizes the vesting schedule and recapture percentage of the Credit Enhancements:

Contract Year	Percentage Vested	Fraction	Credit Enhancement Recapture Percentage
0 (issue up to 1 st anniversary)	0%	0	100%
1	14.2857%	1/7	85.7143%
2	28.5714%	2/7	71.4286%
3	42.8571%	3/7	57.1429%
4	57.1429%	4/7	42.8571%
5	71.4286%	5/7	28.5714%
6	85.7143%	6/7	14.2857%
7+	100%	7/7	0%

24. The percentage that will be recaptured may be calculated by subtracting any applicable free withdrawal amount from the amount requested as a withdrawal, surrender or amount to be applied as annuity payments, and dividing the result by the Contract Value immediately prior to the requested transaction. The amount of the Credit Enhancements that will be recaptured if the owner takes a withdrawal, surrender the contract or annuitize the contract in the first seven years may be calculated with the following formula:

$$\frac{(\text{amount withdrawn or annuitized}) - (\text{applicable "free amount"})}{\text{contract value at the time of the request}} \times \frac{\text{Amount of unvested Credit Enhancements}}{\text{Credit Enhancements}}$$

25. The dollar amount of the Credit Enhancement recaptured will never exceed the dollar amount of the Credit Enhancement added to the contract. In other words, Minnesota Life does not recapture the investment gain/loss – only the dollar amount of the Credit Enhancement added to the Contract. Minnesota Life will not recapture Credit Enhancements attributable to amounts withdrawn representing the annual free withdrawal amount.

26. 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 owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, the Credit Enhancements vest. 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 owner's variable Contract Value (or the owner's interest in the Separate Account) that Minnesota Life needs to "recapture" to avoid anti-selection increases as variable Contract Value (or the 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. (Anti-selection in this context refers to the risk to Minnesota Life that contract owners with a declining contract value and who choose to withdraw or surrender their contract would be doing so at a point in time where accumulation units have a lower value.) Lastly, because it is not administratively feasible to track the unvested value of Credit Enhancements in the Separate Account, 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, the daily administrative charge, and any optional benefit charges paid by any 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.

Applicants' Legal Analysis:

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act to exempt Applicants with respect to (1) the Contracts, (2) Future Accounts that support the Contracts, and (3) Future Underwriters of the Contracts 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 the recapture of all or a portion of the Credit Enhancements (previously applied to premium payments) where the Credit Enhancements were applied and (1) the Contract

owner exercises his or her “free look” right, (2) in the event of death within twelve months of the Credit Enhancements being applied (unless the Contract is continued under the surviving spouse benefit continuation option), or (3) partial withdrawal, annuitization, or surrender of the Contract in the first seven Contract Years (pursuant to the Credit Enhancement recapture formula described above).

2. 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.

3. 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)...”

4. 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.

5. 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.

6. 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 an owner of less than the proportional share of the issuer's net assets, in violation of Sections 2(a)(32) or 27(i)(2)(A) of the 1940 Act, 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 an 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 an 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 an owner withdraws his or her money during the free look period, a death benefit is paid, or a withdrawal or

surrender is made before this anticipated period, Minnesota Life asserts it must recapture the Credit Enhancement subject to recapture in order to avoid a loss.

7. Applicants submit that the proposed Credit Enhancement would not violate Sections 2(a)(32) or 27(i)(2)(A) of the 1940 Act. Minnesota Life would grant Credit Enhancements out of its general account assets and the amount of the Credit Enhancement (although not the earnings on such amounts) would remain Minnesota Life's until such amounts vest with the owner. Until the appropriate recapture period expires, Minnesota Life retains the right to and interest in each owner's Contract Value representing the dollar amount of any unvested Credit Enhancement. Therefore, Applicants submit that 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 owner of his or her then proportionate share of the Separate Account's assets.

8. Applicants further submit that the dynamics 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 an 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 and the vesting schedule of such Credit Enhancements, 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.

9. Minnesota Life's granting of Credit Enhancements would have the result of increasing an 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.

10. 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.

11. 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. An 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 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 an 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 always equal the amount that Minnesota Life paid from its general account for the Credit Enhancement. Similarly, although an 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.

12. 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.

13. Applicants submit that Rule 22c-1 should have no application to the Credit Enhancement available, as neither of the harms that Rule 22c-1 was intended to address arise in connection with the proposed Credit Enhancement. Nonetheless, in order to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Rule 22c-1.

14. Applicants submit that the Commission should grant the exemptions requested in this Application even if the Credit Enhancement arguably conflicts with Sections 2(a)(32) or 27(i)(2)(A) of the 1940 Act or Rule 22c-1 thereunder. Applicants assert that the Credit Enhancement is generally beneficial to an owner. The recapture tempers this benefit somewhat, but unless the owner dies very soon after Contract issue, the owner retains the ability to avoid the Credit Enhancement recapture in the circumstances described herein. While there would be a small downside in a declining market where losses on the Credit Enhancement amount would vest with him or her immediately, it is the converse of the benefits an 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. As any earnings on Credit Enhancements applied would not be subject to recapture and thus would be immediately available to an owner, likewise any losses on Credit Enhancements would also not be subject to recapture and thus would be immediately available to an owner. Applicants submit that the Credit Enhancement recapture does not diminish the overall value of the Credit Enhancement.

15. Applicants assert that the Credit Enhancement recapture provision is necessary for Minnesota Life to offer the Credit Enhancement and avoid anti-selection against it. Applicants submit it would be unfair to Minnesota Life to permit an 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, the owner could obtain a quick profit in the amount of the Credit Enhancement at Minnesota Life’s expense by exercising that right.

Similarly, the owner could take advantage of the Credit Enhancement by taking withdrawals within the recapture period, because the cost of providing the Credit Enhancement is recouped through charges imposed over a period of years. Likewise, because no additional DSC applies upon death of an owner (or annuitant), a death shortly after the award of Credit Enhancement would afford an owner or a beneficiary a similar profit at Minnesota Life’s expense.

16. Applicants submit that in the event of such profits to an 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 the daily administrative charge. Applicants assert that if the profits described above are permitted, an 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 herein.

17. 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. 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 below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. Applicants submit 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.

18. Applicants represent that any Future Contracts will be substantially similar in all material respects to the Current 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 Contracts in the future. 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 an NASD member.

19. Based upon the foregoing, Applicants submit that the proposed Credit Enhancement involves none of the abuses to which provisions of the 1940 Act and rules thereunder are directed. The 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 any Credit Enhancement under the Contracts does not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act to exempt the Applicants with respect to (1) the Contracts, (2) Future Accounts that support the Contracts, and (3) Future Underwriters 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 the recapture of all or a portion of the Credit Enhancement(s) (previously applied to purchase payments) where the credit was applied and (1) the Contract owner exercises his or her “free look” right, (2) in the event of death within twelve months of the Credit Enhancement being applied

(unless the Contract is continued under the surviving spouse benefit continuation option), or (3) partial withdrawal, annuitization, or surrender of the Contract in the first seven Contract Years (pursuant to the Credit Enhancement recapture formula described above).

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

Nancy M. Morris
Secretary