

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28180; File No. 812-13437]

Pruco Life Insurance Company, et al; Notice of Application

March 4, 2008

Agency: Securities and Exchange Commission (“SEC” or “Commission”).

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

Applicants: Pruco Life Insurance Company (“Pruco Life”), Pruco Life Insurance Company of New Jersey (“Pruco Life of New Jersey,” and collectively with Pruco Life, the “Insurance Companies”), Pruco Life Flexible Premium Variable Annuity Account (“Pruco Life Account”); Pruco Life of New Jersey Flexible Premium Variable Annuity Account (“Pruco Life of New Jersey Account,” and collectively with Pruco Life Account, the “Accounts”), and Prudential Annuities Distributors, Inc. (“PAD”, and collectively with the Insurance Companies, and the Accounts “Applicants”).

Summary of Application: Applicants seek an order amending an existing order under Section 6(c) of the Act, exempting them from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to permit the recapture of credit amounts that differ from the credit amounts contemplated by the existing order, under certain specified circumstances.

Filing Date: The application was filed on October 9, 2007, and amended on January 7, 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 March 31, 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 requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

Addresses: Secretary, SEC, 100 F Street, NE, Washington, DC 20549-1090. Applicants, c/o C. Christopher Sprague, Esq., The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102.

For Further Information Contact: Sally Samuel, Senior Counsel, or Joyce M. Pickholz, 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 may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE, Washington, DC 20549 (tel. (202) 551-8090).

Applicants' Representations:

1. In Investment Company Act Release Nos. 27389 (June 6, 2006) (notice) and 27419 (July 7, 2006) (order), the Commission granted an order (the "2006 Order") that permits, under specified circumstances, the recapture of certain bonus payments under the X Series of the Prudential Premier variable annuity contract ("X Series Contract") of each of Pruco Life and Pruco Life of New Jersey. The current bonus credit (the "Credit") under the X Series Contract varies, depending on the age of the older of the owner and any joint owner on the date that the purchase payment is made, but not on the amount of the purchase payment. Specifically, if the elder owner is 80 or younger when a purchase payment is made, the Credit equals 5%, regardless of the purchase payment amount. If the elder owner is between ages 81 and 85 when the

purchase payment is made, then the Credit is 3%, regardless of the amount of the purchase payment.

2. Applicants recapture the Credit if (i) the X Series Contract is surrendered during the free look period, or (ii) the Credit was applied within 12 months prior to death or (iii) the Credit was applied within 12 months prior to a request for a Medically-Related Surrender (note that the medically-related surrender provision is not available under the Pruco Life of New Jersey contract). No contingent deferred sales charges (“CDSC”) is applied in connection with any transaction in which the Credit is recaptured.

3. With respect to X Series Contracts as to which the oldest owner is 80 or younger on the date the purchase payment is made, Applicants wish to increase the credit amount from 5% to 6%. Applicants seek an amended order pursuant to Section 6(c) of the Act exempting them from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit an Insurance Company to recapture this 6% credit (the “New Credit”) under exactly the same scenarios as is allowed under the 2006 Order.

4. Applicants request that the amended order sought herein apply to any future separate account established by the Insurance Company (“Future Account”) to support Future Contracts (as defined below) and to any variable annuity contract offered by the Insurance Companies in the future that is substantially similar in all material respects to the X Series Contracts (“Future Contracts”).

5. Applicants also request that the amended order extend to any FINRA member broker-dealer controlling, controlled by, or under common control with, the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the X Series Contracts offered through the Accounts or any Future Account (“Broker-Dealers”).

Applicants note that the X Series Contracts will be sold through such Broker-Dealers and also through broker-dealers that are FINRA-registered and not affiliated with the Insurance Companies or the Broker-Dealers (the “Unaffiliated Broker-Dealers”). Each Unaffiliated Broker-Dealer will have entered into a dealer agreement with PAD or an affiliate of PAD prior to offering the X Series Contracts.

6. The X Series Contracts are flexible premium deferred variable annuity contracts that are registered on Form N-4. The minimum initial purchase payment is \$10,000, and any additional purchase payment must be at least \$100 (except for contract owners who participate in certain periodic purchase payment programs). The maximum issue age for the X Series Contract is 75, meaning that, for (i) contracts with one owner, the owner must be 75 or younger, (ii) contracts that are jointly-owned, the oldest owner must be 75 or younger, and (iii) for entity-owned contracts, the annuitant must be 75 or younger.

7. There are various insurance features under the X Series Contract and charges associated with those features. There is a 1.55% annual insurance charge that is deducted daily from the unit value of each subaccount, consisting of 1.40% for mortality and expense risks and 0.15% for administrative expenses. For X Series Contracts valued less than \$100,000, there is a maintenance fee equal to the lesser of \$35 (\$30 in New York) or 2% of unadjusted account value, which is assessed annually on the X Series Contract’s anniversary date or upon surrender. The maintenance fee is deducted pro rata from both the variable investment options and the fixed option under the X Series Contract. The Insurance Companies impose no fee with respect to the first 20 transfers in an annuity year, but after the 20th such transfer, currently impose a fee of \$10 per transfer. There is a CDSC under the X Series Contract, the amount of which is based on the “age” of each purchase payment being withdrawn. During the first year after a purchase

payment is made, the CDSC is equal to 9%. In subsequent years, the CDSC is as follows: 8.5% in year 2, 8% in year 3, 7% in year 4, 6% in year 5, 5% in year 6, 4% in year 7, 3% in year 8, and 2% in year 9. After nine years have elapsed from the date on which the purchase payment was made, no CDSC is imposed with respect to that purchase payment. In addition, no CDSC is imposed on the portion of a withdrawal that can be taken as part of the free withdrawal feature of the X Series Contract. The free withdrawal amount available in each annuity year is equal to 10% of the sum of all purchase payments made during the year and prior to the beginning of that year, except that (i) only purchase payments that would be subject to a CDSC are included in that calculation and (ii) a free withdrawal amount that is not used in a given year cannot be carried over to future years. For purposes of calculating the CDSC, partial withdrawals are deemed to be taken first from any free withdrawal amount and thereafter from purchase payments (on a first-in, first-out basis). Earnings are not subject to any CDSC, and thus are not considered part of the free withdrawal.

8. An X Series Contract owner may select one or more of several optional benefits. The Guaranteed Minimum Income Benefit is subject to a charge of 0.50% per year of the protected income value during each year, and the charge is deducted annually in arrears each annuity year. The Lifetime Five Income Benefit (which allows the owner to withdraw a specified protected value through periodic withdrawals or a series of payments for life) is subject to a charge of 0.60% annually of the average daily net assets in the sub-accounts. The X Series Contract also offers a variant of the Lifetime Five benefit (called Spousal Lifetime Five) which, for a charge of 0.75% annually, guarantees income until the second-to-die of two individuals married to each other. There is yet another variant called Highest Daily Lifetime Five, which bears a charge of 0.60% annually. The Highest Daily Value death benefit (which provides a death benefit equal

to the higher of the basic death benefit or the “highest daily value”) is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. Finally, the combination 5% roll-up/HAV death benefit (which refers to a death benefit equal to the greater of (i) the “highest anniversary value” or (ii) purchase payments plus credits, adjusted for withdrawals, appreciated at 5% annually) is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. (For New York contracts, the only optional death benefit will be the Highest Anniversary Value Death Benefit.)

9. In addition to the optional insurance features, the X Series Contract offers several optional administrative features at no additional cost (e.g., auto rebalancing, systematic withdrawals).

10. The X Series Contract offers both variable investment options and a one-year fixed rate option. The X Series Contract also may offer an enhanced, dollar cost averaging fixed interest rate option. At present, only portfolios of Advanced Series Trust are available as variable investment options. Under the X Series Contract, applicants reserve the right to add new underlying funds and series, and to substitute new portfolios for existing portfolios (subject to Commission approval).

11. An owner choosing to annuitize under the X Series Contract will have only fixed annuity options available. Those fixed annuity options include annuities based on a single measuring life or joint lives, based on a single measuring life or joint lives with a period certain (e.g., 5 years, 10 years, or 15 years), or based on a period certain only. If the owner fails to choose an annuity option, the default is to a life annuity with 10 years certain.

12. If the elder owner is 80 or younger when a purchase payment is made, the New Credit will equal 6%, regardless of the purchase payment amount. Applicants will recapture the New

Credit if (i) the X Series Contract is surrendered during the free look period, or (ii) the New Credit was applied within 12 months prior to death or (iii) the New Credit was applied within 12 months prior to the surrender of the contract under the medically-related surrender provision of the X Series Contract (e.g., if the owner is diagnosed with a “fatal illness” and chooses to invoke this contract provision on that basis). (The medically-related surrender provision is not available in New York.) Applicants seek an amended order pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit an Insurance Company to recapture the New Credit described herein in the instances described in the preceding sentence. No CDSC will be assessed in connection with any transaction in which the New Credit is recaptured.

13. Finally, the X Series Contract will offer a “longevity credit” that will be paid on the 10th annuity anniversary and each annuity anniversary thereafter. The longevity credit will equal 0.40% of the sum of all purchase payments (less withdrawals) that are more than 9 years old. Applicants are not seeking an exemption to recapture the longevity credit.

Applicants' Legal Analysis

1. Section 6(c) of the 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 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 Act.
2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, amend the 2006 Order to the extent necessary to permit the recapture of the New Credit under the circumstances described above. Applicants believe 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 Act.

3. Applicants submit that the recapture of the New Credit will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder for the same reasons given in support of the 2006 Order. The New Credit will be recaptured only if the owner (i) exercises his/her free look right, (ii) dies within 12 months after receiving a New Credit or (iii) makes a medically-related surrender within 12 months after receiving a New Credit. The amounts recaptured equal the New Credits provided by each Insurance Company from its own general account assets.

4. When the Insurance Companies recapture the New Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the New Credit amount has not vested. With respect to New Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a New Credit amount under an X Series Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the New Credit during the free look period, individuals could purchase a contract with no intention of retaining it, and simply return it for a quick profit. Applicants also note that the contract owner is entitled to retain any investment gain attributable to the New Credit, even if the New Credit is ultimately recaptured. Furthermore, the recapture of New Credits if death or a medically-related surrender occurs within 12 months after the receipt of a New Credit is designed to provide the Insurance Companies with a measure of protection against "anti-selection." The risk here is that an owner, with full knowledge of impending death

or serious illness, will make very large payments and thereby leave the Insurance Companies less time to recover the cost of the New Credit, to their financial detriment.

5. The recapture of the New Credit could be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Account. The recapture of the New Credit does not involve either of the evils that Rule 22c-1 was intended to address, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

6. Applicants also assert that the proposed recapture of the New Credit does not pose a threat of dilution. To effect a recapture of a New Credit, interests in an owner's account will be redeemed at a price determined on the basis of the current net asset value. The amount recaptured will equal the amount of the New Credit that the Insurance Companies paid out of their general account assets. Although the owner will be entitled to retain any investment gain attributable to the New Credit, the amount of that gain will be determined on the basis of current net asset value. Therefore, no dilution will occur upon the recapture of the New Credit.

7. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the New Credit. Applicants submit that the provisions for recapture of the New Credit under the X Series Contract do not, and any such Future Contract provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the 2006 Order and other Commission precedent.

8. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of the X Series Contract and Future Contracts, and underwritten or distributed by PAD or other broker-dealers, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise.

9. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts that seek to rely on the order issued pursuant to the application will be substantially similar to the X Series Contract in all material respects.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in Section 6(c) of the 1940 Act and that an amended order should, therefore, be granted.

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

Florence E. Harmon
Deputy Secretary