

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28179; File No. 812-13446]

Prudential Annuities Life Assurance Corporation, 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: Prudential Annuities Life Assurance Corporation (“PALAC”), Prudential Annuities Life Assurance Corporation Variable Account B (“Account”); and Prudential Annuities Distributors, Inc. (“PAD,” and collectively with PALAC, and the Account “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 29, 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 07102-2992.

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. 25373 (January 22, 2002) (notice of application) and 25423 (February 20, 2002)(order), the Commission granted an order (the "Order") that permits, under specified circumstances, the recapture of certain bonus payments under the XTRA Credit SIX variable annuity (the "Contract").<sup>1</sup> In particular, the Order permits the recapture of a credit equal to 6% of the purchase payment amount for a purchase payment made during the first annuity year. Since February of 2006, Applicants have been granting a credit of 6.5% during the first annuity year, but recapturing that credit only to the extent permitted absent a Commission order (i.e., during the free look period, after adjusting for charges and any negative investment performance with respect to the credit amount). In this application, Applicants seek

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<sup>1</sup> The Order applies to the American Skandia XTra Credit FOUR annuity (which offers different credit amounts than XTra Credit SIX) as well as the American Skandia XTra Credit SIX annuity. The instant application seeks to amend the Order only with respect to the XTra Credit SIX annuity, and not with respect to the XTra Credit Four annuity. Also that PALAC offers a "private label" version of the Contract, called Optimum Plus that is sold

to recapture the full amount of the 6.5% credit (the “6.5% Credit”) (a) if the Contract is returned during the free look period, (b) if the Credit was granted with respect to a purchase payment submitted within twelve months prior to death (except that PALAC will not recapture the 6.5% Credit to the extent that the death benefit is equal to the account value, but after the recovery of all or a portion of the credit, the death benefit would be equal to less than purchase payments minus proportional withdrawals) and (c) if the Credit was granted with respect to a purchase payment submitted within twelve months prior to the exercise of the medically-related surrender provision of the Contract.

2. 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 PALAC to recapture this 6.5% Credit under the scenarios described above. Applicants request that the amended order sought herein apply to any separate account established in the future by PALAC (“Future Account”) to support a variable annuity contract offered by PALAC in the future that is substantially similar in all material respects to the Contract (the “Future Contracts”) and to any Future Contracts. Applicants also request that the amended order extend to any FINRA member broker-dealer controlling, controlled by, or under common control with PALAC, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contract offered through the Accounts or any Future Account (“Broker-Dealers”). Applicants also request that the amended order extend to any broker-dealers that are FINRA-registered and not affiliated with PALAC or the Broker-Dealers

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through Linsco/Private Ledger Corp. Optimum Plus offers the same credits as XTRA Credit SIX. Thus, references to the “Contract” in this application are intended to include Optimum Plus.

(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 Contract.

3. The 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 Contract is 75, meaning that (a) the owner must be 75 or younger, or (b) for a Contract that is entity-owned, the annuitant must be 75 or younger.

4. There are various insurance features under the Contract and charges associated with those features. There is a mortality and expense risk charge equal to 0.50% annually, an administration charge equal to 0.15% annually, and a distribution charge equal to 1.00% annually that is applicable only in annuity years 1-10. There is a maintenance fee equal to the lesser of \$35 or 2% of account value, which is assessed annually on the Contract’s anniversary date or upon surrender. PALAC imposes no fee with respect to the first 20 transfers in an annuity year, but after the 20<sup>th</sup> such transfer, currently imposes a fee of \$10 per transfer (\$15 maximum). There is a contingent deferred sales charge (“CDSC”) under the Contract, the amount of which is based on the number of years that have elapsed since the issue date of the annuity. For Contracts issued prior to November 20, 2006, the CDSC begins at 9% in year one, and each year thereafter is equal, respectively, to 9%, 8.5%, 8%, 7%, 6%, 5%, 4%, 3%, 2%, with no CDSC in years 11 and later. For Contracts issued on or after November 20, 2006, the CDSC begins at 9% in year one, and each year thereafter is equal, respectively, to 9%, 8%, 7%, 6%, 5%, 4%, 3%, 2%, 1%, with no CDSC in years 11 and later. No CDSC is imposed on the portion of a withdrawal that can be taken as part of the free withdrawal feature of the Contract. The

maximum free withdrawal amount available in each annuity year is equal to 10% of all purchase payments that are subject to a CDSC. Earnings are not subject to any CDSC, and thus are not considered part of the free withdrawal. No CDSC will be imposed in any situations where the 6.5% Credit is recaptured

5. A Contract owner may select one or more of several optional living benefits. The Guaranteed Minimum Income Benefit, which offers lifetime payments based on a guaranteed protected value, is subject to a charge of 0.50% per year of the average protected income value each year. The Lifetime Five Income Benefit (which allows the owner to withdraw a specified protected value through periodic withdrawals or as 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 Contract also offers a variant of the Lifetime Five benefit (called “Spousal Lifetime Five”) that, 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, under which the protected withdrawal value is based on a highest daily account value and which bears a charge of 0.60% annually. The Contract offers a guaranteed minimum accumulation benefit called the Guaranteed Return Option (“GRO” and “GRO Plus”) for which PALAC imposes a charge equal to 0.25% annually. Finally, the Contract offers a guaranteed minimum withdrawal benefit for a charge of 0.35% annually.

6. The Contract offers several optional death benefits, including the Enhanced Beneficiary Protection Death Benefit for a charge of 0.25% annually, the Highest Anniversary Value Death Benefit for a charge of 0.25% annually, a Combination 5% roll-up and Highest Anniversary Value Death Benefit for a charge of 0.50% annually, and a Highest Daily Value Death Benefit for a charge of 0.50% annually. Applicants may add other optional living and death benefits to

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

7. The Contract offers both variable investment options and market value adjustment fixed interest rate options. At present, the Contract offers portfolios of Advanced Series Trust (formerly, American Skandia Trust), AIM Variable Insurance Funds, Evergreen Variable Annuity Trust, First Defined Portfolio Fund, Gartmore Variable Insurance Trust, ProFunds, the Prudential Series Fund, and Wells Fargo Variable Trust. Under the Contract, Applicants reserve the right to add new underlying funds and series, and to substitute new portfolios for existing portfolios (subject to Commission approval).

8. An owner choosing to annuitize under the Contract will have only fixed annuity options available. Those fixed annuity options include annuities offering payments for life, payments based on joint lives, payments for life with a certain period, and fixed payments for a certain period. The latest annuitization date is the first day of the month coinciding with, or immediately following the later of the annuitant's 85<sup>th</sup> birthday or your fifth annuity anniversary. For contracts issued on or after November 20, 2006, the maximum annuity date is triggered by the later of the first of the owner or annuitant to reach age 95 and the fifth anniversary of the issue date of the Contract.

9. For Contracts sold prior to February 13, 2006, the credit for purchase payments made during the first annuity year is 6%, and is not proposed to be changed. For Contracts issued on or after February 13, 2006, the credit applicable to purchase payments made during the first year is 6.5%. Applicants seek an amended exemptive order to allow them to recapture the full amount of this 6.5% Credit under the scenarios identified in the following sentence with respect to Contracts

issued on or after the date of the Commission's order under this application. Specifically, Applicants will recapture the 6.5% Credit if (a) the Contract is surrendered during the free look period, or (b) the credit was applied within 12 months prior to death (except that PALAC will not recapture the credit to the extent that the death benefit is equal to the account value, but after the recovery of all or a portion of the credit, the death benefit would be equal to less than purchase payments minus proportional withdrawals), or (c) the credit was applied within 12 months prior to the surrender of the contract under the medically-related surrender provision of the 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 feature 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 the Insurance Company to recapture the 6.5% Credit described herein in the instances described in the preceding sentence.

#### 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 Order to the extent necessary to permit the recapture of the 6.5% 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 6.5% 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 Order. The 6.5% Credit will be recaptured only if the owner (a) exercises his/her free look right, (b) dies within 12 months after receiving a 6.5% Credit or (c) makes a medically-related surrender within 12 months after receiving a 6.5% Credit. The amounts recaptured equal the 6.5% Credits provided by the Insurance Company from its own general account assets.

4. When PALAC recaptures the 6.5% Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of the Account's assets, because his or her interest in the 6.5% Credit amount has not vested. With respect to 6.5% Credit recaptured upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a 6.5% Credit amount under a Contract that has been returned for a refund after a period of only a few days. If PALAC could not recapture the 6.5% 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 6.5% Credit, even if the 6.5% Credit is ultimately recaptured. Furthermore, the recapture of 6.5% Credits if death or a medically-related surrender occurs within 12 months after the receipt of a Credit is designed to provide PALAC 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 PALAC less time to recover the cost of the 6.5% Credit, to its financial detriment.



5. Applicants submit that the provisions for recapture of the 6.5% Credit under the 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 Order and other Commission precedent.

6. The recapture of the 6.5% 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 an Account. The recapture of the 6.5% Credit does not involve either of the evils that Rule 22c-1 was intended to address, namely: (a) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or redemption or repurchase at a price above it, and (b) other unfair results, including speculative trading practices. Applicants assert that the proposed recapture of the 6.5% Credit does not pose a threat of dilution. To effect a recapture of a 6.5% 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 6.5% Credit that the Insurance Company paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the 6.5% 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 6.5% Credit.

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 6.5% Credit.

7. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by PALAC in connection with the issuance of Contracts 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.

8. 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 Contracts 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