

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28263; File No. 812-13455]

Prudential Retirement Insurance and Annuity Company, et al., Notice of Application
May 7, 2008

Agency: Securities and Exchange Commission ("Commission").

Action: Notice of application for an order approving the terms of certain offers of exchange pursuant to Section 11 of the Investment Company Act of 1940 (the "1940 Act").

Applicants: Prudential Retirement Insurance and Annuity Company ("PRIAC"), the PRIAC Variable Contract Account A (the "PRIAC Account"), and Prudential Investment Management Services LLC ("PIMS") (collectively, the "Applicants").

Summary of Application: Applicants request an order on behalf of PRIAC and any current or future affiliated life insurance company (each an "Insurance Company" and collectively, the "Insurance Companies"), the PRIAC Account and any current or future separate account of an Insurance Company (each a "Separate Account" and collectively, the "Separate Accounts"), and PIMS and any current or future broker-dealer affiliated with an Insurance Company serving as principal underwriter of variable annuity contracts issued by an Insurance Company or registered open-end management investment companies advised by an affiliate of an Insurance Company (each a "Distributor" and collectively, the "Distributors") pursuant to Section 11 of the 1940 Act approving the terms of certain offers of exchange between certain variable annuity contract subaccounts and certain registered open-end management investment companies.

Filing Date: The application was filed on November 29, 2007, and an amended and restated application was filed on May 2, 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 Commission's Secretary 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 May 29, 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 who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: John M. Ewing, Vice President and Corporate Counsel, The Prudential Insurance Company of America, 200 Wood Avenue South, Iselin, NJ 08830-2706, with a copy to Christopher E. Palmer, Goodwin Procter LLP, 901 New York Avenue, NW, Washington, DC 20001.

For Further Information Contact: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551-6795.

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

Applicants' Representations:

1. PRIAC is a stock life insurance company incorporated under the laws of Connecticut. PRIAC is an indirect wholly-owned subsidiary of Prudential Financial, Inc.

2. The PRIAC Account was established by PRIAC as a separate account under Connecticut law and is registered under the 1940 Act as a unit investment trust for the purpose of funding certain variable annuity contracts issued by PRIAC (the "Contracts"). Security interests under the Contracts have been registered under the Securities Act of 1933 (the "1933 Act"). The PRIAC Account currently has five subaccounts, each of which invests exclusively in a single corresponding portfolio of the Advanced Series Trust ("AST"). AST is a Massachusetts business trust and is registered under the 1940 Act as an open-end management investment company with multiple separate series or portfolios. Shares of the AST portfolios are sold to insurance company separate accounts, including the PRIAC Account, and are registered under the 1933 Act. AST is advised by Prudential Investments LLC and AST Investment Services, Inc., both of which are indirect wholly-owned subsidiaries of Prudential Financial, Inc.

3. PIMS is registered with the Commission as a broker-dealer and is a member of the Financial Industry Regulatory Authority. PIMS is an indirect wholly-owned subsidiary of Prudential Financial, Inc. PIMS serves as the distributor and principal underwriter of the Contracts. PIMS also serves as distributor and principal underwriter for the registered open-end management investment companies advised by Prudential Investments LLC and/or AST Investment Services, Inc. (any such current or future investment company advised by Prudential LLC, AST Investment Services, Inc. or

an affiliate, or series thereof, hereinafter referred to as a “Prudential Mutual Fund” and collectively, the “Prudential Mutual Funds”).

4. Applicants and their affiliates propose to offer certain retirement programs, each of which is designed to provide participants (“Participants”) in a single coordinated program a selection of investment options, including both Contracts and mutual fund options, and the ability to periodically transfer their account values among the investment options without charge (each a “Program” and collectively, the “Programs”). The Programs are designed to serve the retirement income needs of Participants by combining the benefits of direct investments in mutual funds with the insurance benefits available through variable annuity contracts, including benefits designed to provide guaranteed withdrawal benefits for the life of the Participant and/or his or her spouse. Applicants have designed two Programs, which are described below, and Applicants may in the future design additional similar Programs.

5. The first Program (the “IRA Program”) is an individual retirement account (“IRA”) that qualifies for federal tax benefits under Section 408 of the Internal Revenue Code of 1986, as amended (the “Code”). The IRA will be funded by a rollover transaction from certain employment based retirement plans or arrangements administered by PRIAC or its affiliates or from certain group annuity contracts issued by PRIAC.

6. Participants in the IRA Program may allocate their investments to a Contract and/or to certain Prudential Mutual Funds.¹

¹ Participants may also direct investments under the IRA Program to an annuity contract offering a fixed rate investment option (the “Fixed Rate Annuity Contract”). Interests under the Fixed Rate Annuity Contract are exempt from registration under the 1933 Act under Section 3(a)(8) of the 1933 Act. Because the interests under the

7. The Contract permits Contract owners to allocate Contract value to and among four subaccounts of the PRIAC Account (each, a “Subaccount” and collectively, the “Subaccounts”). Each current Subaccount invests in an AST asset allocation portfolio. The Contract permits transfers of Contract value among the Subaccounts subject to certain restrictions set forth in the Contract prospectus. The Contract offers a guaranteed withdrawal benefit which guarantees certain minimum withdrawal amounts for the life of the Participant and/or his or her spouse subject to certain conditions (the “Guaranteed Withdrawal Benefit”).

8. PIMS currently makes available to the IRA Program shares of the following 16 Prudential Mutual Funds: Jennison 20/20 Focus Fund; Dryden Government Income Fund, Inc.; Dryden Index Series Fund; Jennison Small Company Fund, Inc.; The Prudential Investment Portfolios, Inc. (Jennison Growth Fund); Jennison Mid-Cap Growth Fund, Inc.; JennisonDryden Portfolios (Jennison Value Fund); The Target Portfolio Trust (Large Capitalization Growth, Small Capitalization Growth; International Equity; Total Return Bond, Large Capitalization Value, Small Capitalization Value); Jennison Natural Resources Fund, Inc.; Jennison Sector Funds, Inc. (Jennison Utility Fund); Dryden High Yield Fund, Inc.; and MoneyMart Assets, Inc.

9. PIMS may make available shares of additional Prudential Mutual Funds in the future. Any class of shares of a Prudential Mutual Fund made available in the IRA Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one

Fixed Rate Annuity Contract are not securities issued by a registered investment company, Applicants are not seeking exemptive relief with respect to exchanges to and from the Fixed Rate Annuity Contract.

Prudential Mutual Fund to another Prudential Mutual Fund within the IRA Program. The Prudential Mutual Funds permit exchanges between multiple funds subject to certain conditions set forth in the prospectuses for the Prudential Mutual Funds. Therefore, Participants are permitted to transfer from one Prudential Mutual Fund to another Prudential Mutual Fund subject to the conditions set forth in the prospectuses.

10. Participants in the IRA Program are charged an overall asset-based account fee for the IRA account and also bear the expenses of the investment options available under the IRA Program. The IRA account fee varies by account size and ranges from an annual rate of 0.25% to 1.10% of assets in the IRA Program, subject to a minimum annual fee of \$100 and a maximum annual fee of \$500. The Contract does not impose any sales charges on investments in the Contract or any sales charges or other withdrawal charges on withdrawals from or surrenders of the Contract. PRIAC reserves the right to charge a maximum transfer fee of \$30 per transfer after the twelfth transfer among investment options in the Contract in any one Contract year, but it currently does not impose any transfer fee. PRIAC may also deduct the charge for premium taxes imposed on PRIAC by certain states or jurisdictions, which currently range from 0% to 3.5% of Contract value. No premium tax deduction will be applied to any exchange between a Subaccount and a Prudential Mutual Fund under the IRA Program. The Contract provides for the following periodic expenses. PRIAC reserves the right to charge an annual Contract fee of up to \$150, but currently does not assess this charge. PRIAC assesses the following charges, expressed as an annual percentage of Contract value: insurance and administrative charge (maximum charge of 1.60% and current charge of 0.50%); base Guaranteed Withdrawal Benefit charge (maximum charge of

1.45% and current charge of 0.95%); and optional spousal Guaranteed Withdrawal Benefit charge (maximum charge of 0.60% and current charge of 0.50%). Investments in the Contract also bear indirectly the fees and expenses of the underlying AST portfolios. Investments in the shares of Prudential Mutual Funds available under the IRA Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one Prudential Mutual Fund to another Prudential Mutual Fund under the IRA Program. Investments in the Prudential Mutual Funds are subject to ongoing fees and expenses.

11. The second Program (the “Retirement Plan Program”) is designed for ongoing retirement arrangements that qualify for federal tax benefits under Section 401(a), 403 or 457 of the Code and certain non-qualified arrangements. The Retirement Plan Program permits Participants to allocate program investments to a Contract and/or to certain Prudential Mutual Funds.²

12. The Contract used in the Retirement Plan Program is substantially identical to the Contract used in the IRA Program, with minor changes needed to reflect the existence of an employment based retirement plan and plan sponsor and related provisions required by tax law.

13. PIMS currently makes available to the Retirement Plan Program shares of the following Prudential Mutual Funds: Dryden Total Return Bond Fund, Inc.; Jennison 20/20 Focus Fund; Dryden California Municipal Fund (California Income Series);

² Participants may also direct investments to the Fixed Rate Annuity Contract. Participants may also direct investments to registered open-end investment companies for which Applicants or their affiliates do not serve as investment adviser or principal underwriter (the “Unaffiliated Mutual Funds”). Because the Unaffiliated Mutual Funds and their principal underwriters are not affiliated with Applicants, Applicants are not seeking exemptive relief with respect to exchanges to and from the Unaffiliated Mutual Funds.

Dryden Government Income Fund, Inc.; Cash Accumulation Trust (Liquid Assets Fund); Dryden Index Series Fund; Dryden Global Real Estate Fund; Jennison Small Company Fund, Inc.; Prudential Institutional Liquidity Portfolio, Inc. (Institutional Money Market Series); The Prudential Investment Portfolios, Inc. (Dryden Active Allocation Fund, Jennison Growth Fund, Jennison Equity Opportunity Fund, JennisonDryden Conservative Allocation Fund, JennisonDryden Moderate Allocation Fund, JennisonDryden Growth Allocation Fund); Dryden Municipal Bond Fund (Insured Series, High Income Series); Dryden Tax-Managed Funds (Dryden Large-Cap Core Equity Fund); Dryden Small-Cap Core Equity Fund, Inc.; Jennison Mid-Cap Growth Fund, Inc.; JennisonDryden Portfolios (Jennison Value Fund, Dryden US Equity Active Extension Fund); Prudential World Fund, Inc. (Jennison Global Growth Fund, Dryden International Equity Fund, Dryden International Value Fund); The Target Portfolio Trust (Large Capitalization Growth, Small Capitalization Growth; International Equity; Total Return Bond, Mortgage Backed Securities, Large Capitalization Value, Small Capitalization Value, International Bond, Intermediate-Term Bond, U.S. Government Money Market); Target Asset Allocation Funds (Target Conservative Allocation Fund, Target Moderate Allocation Fund, Target Growth Allocation Fund); Strategic Partners Style Specific Funds (Jennison Conservative Growth Fund, Dryden Small Capitalization Value Fund); Strategic Partners Opportunity Funds (Jennison Select Growth, Dryden Strategic Value Fund); Strategic Partners Mutual Funds, Inc. (Dryden Mid-Cap Value Fund, Jennison Equity Income Fund, Dryden Money Market Fund); Dryden Government Securities Trust (Money Market Series); Jennison Blend Fund, Inc.; Jennison Natural Resources Fund, Inc.; Jennison Sector Funds, Inc. (Jennison Financial Services Fund, Jennison Health Sciences Fund, Jennison Utility

Fund); Nicholas-Applegate Fund, Inc.; Dryden Global Total Return Fund, Inc.; Dryden High Yield Fund, Inc.; MoneyMart Assets, Inc.; Prudential Tax-Free Money Fund, Inc. (Dryden Tax-Free Money Fund); Dryden National Municipals Fund, Inc.; and Dryden Short-Term Bond Fund, Inc.

14. PIMS may make available shares of additional Prudential Mutual Funds in the future. Any class of shares of a Prudential Mutual Fund made available in the Retirement Plan Program are not subject to any sales charges on purchases or any sales charges or other withdrawal charges on redemption. No fee or charge applies to any exchange from one Prudential Mutual Fund to another Prudential Mutual Fund. Investments in the Prudential Mutual Funds are subject to ongoing fees and expenses.

15. Unlike the IRA Program, there is no set account fee under the Retirement Plan Program. Instead, each plan sponsor negotiates an administrative services agreement with PRIAC or an affiliate under which PRIAC or the affiliate provides recordkeeping and other services to the Plan. Although the terms of these administrative services agreements vary from plan to plan, in all cases no transaction fees are charged for exchanges from one investment option to another investment option under the Program.

16. The Programs are designed to provide flexibility to transfer value among the investment options available under the Program. Applicants state that under existing procedures and Rules 11a-2 and 11a-3 under the 1940 Act, exchanges may be made among the Variable Annuity Subaccounts and exchanges may be made among the Prudential Mutual Funds.

17. Applicants propose to add an additional exchange feature under the Programs. In particular, Applicants propose that Participants be permitted to transfer value: (1) from a Separate Account to a Prudential Mutual Fund; and (2) from a Prudential Mutual Fund to a Separate Account. Applicants seek a Commission Order under Section 11 of the 1940 Act to permit this additional exchange feature.

18. Applicants represent that the exchange feature under any Program will meet the following conditions:

- (a) no sales charge or other charge will be assessed in connection with a withdrawal from a Separate Account to be transferred to a Prudential Mutual Fund;
- (b) no sales charge or other charge will be assessed in connection with an allocation to a Separate Account from a transfer from a Prudential Mutual Fund;
- (c) the Distributor will offer in the Program only classes of Prudential Mutual Funds that do not charge any sales or other charges on purchases or redemption;
- (d) the exchange will not be a taxable event or have adverse tax consequences for the Participant; and
- (e) the Separate Account prospectus will disclose the terms of the exchange feature, including (i) the fact that Applicants reserve the right to terminate or modify the Program upon notice, (ii) any limitations on exchanges, and (iii) the effect of an exchange on any Contract benefits, including the Guaranteed Withdrawal Benefit.

19. Applicants state that exchanges will be subject to any rules or procedures established under the Contract or established by the Prudential Mutual Funds with respect to transfers and redemptions generally, including minimum transfer amounts and policies and procedures relating to frequent transfers and abusive trading practices. Applicants also reserve the right to implement exchange limitations for the Programs generally. No fees or charges will be assessed in connection with any exchange from a Separate Account to a Prudential Mutual Fund or from a Prudential Mutual Fund to a Separate Account.

20. Applicants intend to make this exchange feature available on an ongoing basis to all Participants, but reserve the right to terminate the offer with respect to all or any of the investment options with advance notice to affected Participants.

Applicants' Legal Analysis:

1. Section 11(a) of the 1940 Act provides, in pertinent part, that “[i]t shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made.” Section 11(c) provides that, irrespective of the basis of exchange, subsection (a) shall be applicable to any offer of exchange of any security of a registered open-end company for a security of a registered

unit investment trust, or to any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Although all the proposed exchanges would be at net asset value, the involvement of any registered unit investment trust (such as a Separate Account) requires a prior order of approval of the Commission.

2. The legislative history of Section 11 indicates that the purpose of the provision is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made “solely for the purpose of exacting additional selling charges.” H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed offers of exchange involve no possibility of such abuse.

3. Applicants assert that, because the proposed exchange offers for which approval is sought will be based on the relative net asset values or unit values of the interests being exchanged, there is no possibility of the abuse to which Section 11 was directed. Nevertheless, because each of the proposed exchange offers involves a unit investment trust, Section 11(c) makes Section 11(a) inapplicable irrespective of the basis of the exchange. Applicants state that exemptive relief is necessary for Applicants to offer the proposed exchange feature.

4. Applicants note that previous applications under Section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange.

Rule 11a-2, adopted under Section 11 of the 1940 Act, provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another, or of one variable life insurance contract for another. Applicants state that adoption of Rule 11a-3 represents the most recent Commission action under Section 11 of the 1940 Act. As with Rule 11a-2, the focus of the Rule is primarily on sales and administrative charges that would be incurred by investors for effecting exchanges. Applicants submit that the terms of the proposed offer are consistent with Rule 11a-3 because no sales or administrative charge will be incurred as a result of the exchange. Because one investment company involved in the proposed exchange offer is organized as a unit investment trust rather than as a management investment company, Applicants believe that they may not rely upon Rule 11a-3.

Class Relief:

1. Applicants request that the Order extend to all similarly situated current and affiliated entities, defined previously as Insurance Companies, Separate Accounts and Distributors. Applicants also request that the Order extend to all variable annuity contracts issued by an Insurance Company that are substantially similar to the Contracts and to any share class of any Prudential Mutual Fund for which there are no front-end sales charges or deferred sales charges.

2. Applicants submit that providing class relief is appropriate. Applicants assert that because no front-end or deferred sales charges are applicable and all exchanges will be at relative net asset value, there will be no possibility of the abuses Congress sought to prevent through Section 11. Furthermore, without such exemptive relief, before Participants could be given any additional exchange options, Applicants

would have to apply for and obtain additional approval orders. Applicants believe that such additional applications would present no new issues under the 1940 Act not already addressed in the application.

Conclusion:

For the reasons and upon the facts summarized above, Applicants submit that the proposed exchange offers at net asset value do not involve any of the abuses that Section 11 is designed to prevent and provide a benefit to Participants by expanding exchange privileges under Programs designed to provide a mix of investment options and annuity benefits for retirement savings.

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

Florence E. Harmon
Deputy Secretary