

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC - 28377; 812- 13572]

Prudential Financial, Inc., et al.; Notice of Application and Temporary Order

September 5, 2008

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

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (“Act”).

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Prudential Financial, Inc. (“Prudential”) on September 4, 2008 by the United States District Court for the District of New Jersey (“Injunction”) until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: Prudential, Prudential Investment Management, Inc. (“PIM, Inc.”), Prudential Investments LLC (“PI LLC”), The Prudential Insurance Company of America (“Prudential Insurance”), Jennison Associates LLC (“Jennison”), Prudential Bache Asset Management, Inc. (“Bache”), Quantitative Management Associates LLC (“QMA, LLC”), Pruco Securities, LLC (“Pruco”), AST Investment Services, Inc. (“AST Investment”), Prudential Annuities Distributors, Inc. (“PAD”), Prudential Investment Management Services LLC (“PIMS LLC”), Pruco Life Insurance Company (“Pruco Life”), Pruco Life Insurance Company of New Jersey (“Pruco Life NJ”), Prudential Annuities Life Assurance Corporation (“PALAC”) and Prudential Retirement Insurance and Annuity Company (“PRIAC”) (collectively, other than Prudential, the “Fund Servicing Applicants” and together with Prudential, the “Applicants”).<sup>1</sup>

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<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which Prudential is or may become an affiliated person (together with the Applicants, the “Covered Persons”).

Filing Dates: The application was filed on September 5, 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 September 30, 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 Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants c/o Kathryn Quirk, Prudential Financial, Inc., 751 Broad Street, Newark, New Jersey 07102.

For Further Information Contact: Keith A. Gregory, Senior Counsel, at 202-551-6815 or Janet M. Grossnickle, Assistant Director, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. Prudential, through its subsidiaries and affiliates, offers a wide array of financial products and services, including life insurance, annuities, mutual funds, pension and retirement-related services and administration, investment management, real estate brokerage and relocation services. Each of the Fund Servicing Applicants is an indirect wholly owned subsidiary of Prudential. PIM, Inc., PI LLC, Jennison, QMA, LLC and AST Investment (collectively, "Adviser Applicants") are investment advisers registered under the Investment Advisers Act of 1940 ("Advisers Act") that provide investment management and advisory services to certain registered investment companies ("Funds"). Bache is an investment adviser registered under the Advisers Act and plans to provide advisory services to Funds in the near future. Pruco, PAD, and PIMS LLC are broker-dealers registered under the Securities Exchange Act of 1934 ("Exchange Act") and serve as a principal underwriter to open-end Funds and Funds that are unit investment trusts ("UITs"). Prudential Insurance, Pruco Life, Pruco Life NJ, PALAC and PRIAC serve as depositors for registered separate accounts, all of which are Funds.

2. On September 4, 2008, the United States District Court for the District of New Jersey entered the Injunction against Prudential in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that Prudential violated sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and rules 12b-20, 13a-1, 13a-11 and 13a-13 under the Exchange Act, in connection with Prudential's accounting and public reporting practices. The Complaint relates to Prudential's inaccurate recording of income for 2000, 2001, and 2002 in the consolidated financial statements included in its periodic and other filings for the years 2001, 2002 and 2003. The inaccuracies in the financial statements related to recorded

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<sup>2</sup> Securities and Exchange Commission v. Prudential Financial, Inc., Final Judgment on Consent Against Defendant Prudential Financial, Inc., 08-cv-03916 (PGS) (D.N.J. Sept. 4, 2008).

income from a series of purported reinsurance contracts entered into from 1997 to 2002 between the General Reinsurance Company and two former property and casualty subsidiaries of Prudential. The Complaint alleged that Prudential violated the financial reporting, books and records, and internal controls provisions of the Exchange Act. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Prudential consented to the entry of the Injunction.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an affiliated person of any insurance company, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person and any person directly or indirectly owning, controlling, or holding with the power to vote, 5 percent or more of the outstanding voting securities of such other person. Applicants state that Prudential is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) of the Act if it is established

that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that it would not be against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor or principal underwriter for any Fund. Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than Prudential itself) had any involvement in the conduct alleged in the Complaint. Applicants further state that the personnel at Prudential who were involved in the violations alleged in the complaint have had no and will not have any future involvement in providing advisory, subadvisory, depository, or underwriting services to Funds. In addition, Applicants represent that no Fund to which any Fund Servicing Applicant provides investment advisory, depository or underwriting services bought or held any securities issued by Prudential during the period covered by the Complaint, other than with respect to index funds and routine trade errors that were promptly corrected.

5. Applicants state that their inability to continue to provide advisory and underwriting services to the Funds and to serve as depositor to Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of

directors of the Funds (the “Boards”), including the directors who are not “interested persons,” as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising, subadvising, and distributing the Funds, and acting as a depositor to registered separate accounts. Applicants further state that prohibiting them from providing advisory and distribution services or acting as a depositor to the registered separate accounts would not only adversely affect their businesses, but would also adversely affect over 2000 employees that are involved in those activities. Applicants state that they have not previously applied for an exemptive order under section 9(c) of the Act. Applicants state that an affiliate of Prudential previously obtained an order under section 9(c) of the Act.<sup>3</sup>

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<sup>3</sup> In the Matter of Prudential Securities Incorporated, Investment Company Act Rel. Nos. 18031 (Mar. 6, 1991) (notice) and 18096 (Apr. 15, 2005) (order).

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from September 5, 2008, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon  
Acting Secretary