

Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 02–18231 Filed 7–18–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25660; File No. 812–12694]

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

July 15, 2002.

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 (the “1940 Act”) granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder.

Summary of Application: Applicants seek an amendment of an Existing Order (described below) to permit the recapture of Credit amounts that differ from the Credit amounts contemplated by the Existing Order under the circumstances specified herein.

Applicants: Pruco Life Insurance Company (“Pruco Life”); Pruco Life Flexible Premium Variable Annuity Account (“Pruco Life Account”); Pruco Life Insurance Company of New Jersey (“Pruco Life of New Jersey,” and collectively with Pruco Life, the “Insurance Companies”); 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 Investment Management Services LLC (“PIMS,” and collectively with the Insurance Companies and the Accounts, “Applicants”).

Filing Date: The application was filed on November 19, 2001, and amended on July 3, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 2002, 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 SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, c/o The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102–2992, Attn: C. Christopher Sprague, Esq.

FOR FURTHER INFORMATION CONTACT:

Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, 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, 450 Fifth Street, NW, Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants’ Representations

1. On September 29, 2000, the Commission issued the Existing Order exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit, under specified circumstances the recapture of certain credits applied to purchase payments made under the Contracts and Future Contracts described in the Existing Order.¹

2. Pursuant to the Existing Order, the Insurance Companies issued Contracts (the “Original Contracts”) that uniformly applied a 4% Credit to purchase payments made, regardless of the purchase payment amount or the contract owner’s age. Under this original version of the Contracts, each Credit is typically subject to its own vesting schedule, under which 10% of the Credit vests on each of the first six Contract Anniversaries following the purchase payment, and the remaining portion of the Credit vests on the seventh Contract Anniversary. Under some versions of the Original Contracts, the Credit may vest sooner. If a withdrawal is made of all or part of a purchase payment, the non-vested portion of the Credit attributable to that purchase payment is recaptured. In addition, the non-vested portion of the Credit is recaptured if: (a) The Contract is canceled under the free look

provision, (b) death occurs within one year of a purchase payment, or (c) annuitization occurs during the vesting period applicable to the Credit.

3. The Insurance Companies now desire to recapture Credit amounts that differ depending upon the purchase payment amount and the contract owner’s age when the purchase payment is made. Under this new version of the Contracts (the “New Contracts”), a 4% Credit will be applied to purchase payments less than \$250,000 and a 5% Credit will be applied to purchase payments of \$250,000 or more if the contract owner is age 80 or younger (for jointly-owned contracts, if the older owner is 80 or younger) when the purchase payment is made. If the contract owner is age 81 or older (for jointly-owned contracts, if the older owner is 81 or older) when the purchase payment is made, a 3% Credit will be applied regardless of the amount of the purchase payment. Under the New Contracts, the Credits will generally vest upon the expiration of the free look period. However, as under the Original Contracts, if a Credit is applied to a purchase payment within one year of death, any Credit attributable to that purchase payment will be recaptured in calculating the death benefit payable under the New Contracts. That is, in calculating the death benefit, the contract value will be adjusted to recapture any credits paid within one year of death.

4. Under the New Contracts, the Insurance Companies will recapture Credits applied to purchase payments under the same circumstances permitted by the Existing Order, except that there will be no recapture of Credits upon a withdrawal or surrender after the free look period has expired, or upon annuitization.

5. The New Contracts are substantially similar in all material respects to the Original Contracts covered by the Existing Order except that under the New Contracts: (a) The Credits are applied as described above, and vest upon the expiration of the free look period (except for Credits applied within one year prior to death), (b) the withdrawal charge as a percentage of purchase payments ranges from 8% prior to the first Contract Anniversary to 0% after 7 Contract Anniversaries, and (c) the asset-based insurance and administrative expense charges are at annual rates of 1.50% for the base death benefit, 1.70% for the guaranteed minimum death benefit with either Step-Up or the Roll-Up, and 1.80% for the guaranteed minimum death benefit with the greater of the Step-Up and the

¹ Investment Company Act Release Nos. 24635 (September 7, 2000) (notice) and 24670 (September 29, 2000) (order).

Roll-Up, assessed pro-rata against the net assets of each sub-account.

6. Applicants seek an amendment to the Existing Order to permit the recapture of the Credit amounts that will be applied to purchase payments made under the New Contracts. The New Contracts include those that exist presently, as well as contracts that may be issued in the future by the Insurance Companies through the Accounts and any other separate account established in the future by the Insurance Companies ("Future Accounts") that are substantially similar in all material respects to the existing Contracts ("Future New Contracts"). Such Contracts will be sold by PIMS, the principal underwriter of the New Contracts, through broker-dealers that are affiliated with the Insurance Companies or NASD-registered broker-dealers that are not affiliated with the Insurance Companies. Each unaffiliated broker-dealer will have entered into a dealer agreement with PIMS or an affiliate of PIMS prior to offering the New Contracts. Applicants also request that the amended order extend to any National Association of Securities Dealers, Inc. member broker-dealer controlling, controlled by or under common control with, the Insurance Companies, whether existing or created in the future, that serves as distributor or principal underwriter of the New Contracts offered through the Accounts or any Future Account.

Applicant's Legal Analysis

1. 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. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, amend the Existing Order to the extent necessary to permit the recapture of the Credit amounts described above under New Contracts. 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 1940 Act.

2. Applicants submit that the recapture of Credits 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 Existing Order. Credits under the New Contracts will be recaptured only if the owner exercises his/her free look right or with regard to Credits applied within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any 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 Credit amount has not vested. With respect to Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a Credit amount under a New Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the Credit, individuals could purchase a New Contract with no intention of retaining it, and simply return it for a quick profit. The owner generally bears the investment risk from the time of purchase until return of the New Contract, and is entitled to retain any investment gain attributable to the Credit.

3. Applicants submit that the provisions for recapture of any Credits under the New Contracts do not, and any such Future New Contract provisions will not, violate Section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and Rule 22c-1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the Existing Order.

4. 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 New Contracts and Future New Contracts that are substantially similar to the New Contracts described herein in all material respects, and underwritten or distributed by PIMS, 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 1940 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.

5. Applicants undertake that Future New Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to this Application will be substantially similar to the New 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, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-18253 Filed 7-18-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46196; File No. SR-AMEX-2002-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Performance Evaluation Procedures for Specialists Trading Securities Pursuant to Unlisted Trading Privileges

July 12, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to its proposal on May 6, 2002³ and Amendment No. 2 to its proposal on May 28, 2002.⁴ The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 3, 2002 ("Amendment No. 1").

⁴ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 24, 2002 ("Amendment No. 2").