

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Three First National Plaza, Chicago, Illinois 60670.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or C. David Messman, Branch Chief, at (202) 942-0564 (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 from the SEC's Public Reference Branch.

#### Applicant's Representations

1. Applicant is an open-end non-diversified management investment company organized as a Massachusetts business trust. On March 13, 1992, applicant filed a notification of registration pursuant to section 8(a) of the Act on Form N-8A and a registration statement under the Act and the Securities Act of 1933. Applicant's registration statement has not been declared effective and applicant has not made a public offering of its shares.

2. Applicant has not issued or sold any securities. As of the date of the filing of the application, applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those

necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.  
Margaret H. McFarland,  
*Deputy Secretary.*  
[FR Doc. 95-29613 Filed 12-5-95; 8:45 am]  
BILLING CODE 8010-01-M

[Rel. No. IC-21558; No. 812-9722]

#### The Prudential Insurance Company of America, et al.

November 29, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** The Prudential Insurance Company of America ("Prudential"), The Prudential Variable Appreciable Account ("Separate Account"), and Pruco Securities Corporation, Inc. ("Pruco Securities").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) for exemptions from Section 27(a)(3) of the 1940 Act and Rule 6e-3(T)(b)(13)(ii) thereunder.

**SUMMARY OF APPLICATION:** This order will permit the Separate Account to issue flexible premium survivorship variable life insurance contracts ("Contracts") in which the sales charge deducted from premiums up to one target premium paid during any year exceeds the sales charge payable on any excess premium payments made in any prior year.

**FILING DATE:** The application was filed on August 14, 1995.

**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 December 26, 1995, 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 requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Applicants, Thomas Castano, Prudential Insurance Company of America, Prudential Plaza, Newark, New Jersey 07102.

**FOR FURTHER INFORMATION CONTACT:** Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, 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 Commission's Public Reference Branch.

#### Applicants' Representations

1. Prudential, a New Jersey mutual life insurance company, offers life insurance and annuities in all states, the District of Columbia, and in all United States' territories and possessions.

2. The Separate Account is a separate account established by Prudential to fund the Contracts and other variable life insurance contracts issued by Prudential. The Separate Account is registered with the Commission under the 1940 Act as an unit investment trust, and interests in the Contracts are registered with the Commission as securities under the Securities Act of 1933. The Separate Account presently is comprised of fifteen sub-accounts ("Sub-Account") each of which invests exclusively in a corresponding portfolio of the Prudential Series Fund, Inc. The Prudential Series Fund, Inc. is an open-end diversified management investment company registered under the 1940 Act. Its shares currently are sold only to separate accounts of Prudential and certain subsidiaries of Prudential that fund variable life insurance and variable annuity contracts.

3. Pruco Securities, a wholly-owned subsidiary of Prudential, is the principal underwriter for the Contracts. Pruco Securities is registered as a broker-dealer under the Securities Exchange Act of 1934.

4. The Contracts are flexible premium survivorship variable life insurance contracts. The Contracts provide life insurance coverage on two insureds with a death benefit payable when the last-surviving of the two insureds dies. The Contracts allow Contract owners to allocate premium payments among various Sub-Accounts and a fixed-rate option.

5. In addition, the Contracts offer Contract owners a choice between a fixed insurance amount or a variable insurance amount. The fixed insurance amount provides a death benefit under the Contract equal to the basic insurance amount regardless of the investment

performance of the investments chosen by Contract owners, provided the Contract remains in force. The variable insurance amount provides for an initial basic insurance amount, but favorable investment performance and the payment of additional premiums generally will result in an increase in the death benefit.

6. After paying the initial premium, Contract owners generally are free to pay premiums at any time and in any amount (above a minimum of \$25), and the Contracts will not lapse if the Contract fund is sufficient to cover monthly fees and charges deducted from the account value.<sup>1</sup> If the Contract owners pay premiums at or above certain levels, the Contract owner will be entitled to guaranteed death benefits even if poor investment performance results in the Contract fund dropping below the amount needed to pay charges due under the Contract. If target premiums are paid at the beginning of each Contract year, the Contract will stay in force during the defined period known as the limited death benefit guaranteed period (assuming no loans or withdrawals).<sup>2</sup> The target premiums will be level if the Contract contains no riders or extra risk charges. If the Contract includes certain riders, these premiums may increase each year, reflecting increasing rider charges. The target level premium, the premium used by Prudential to calculate the applicable charges for sales expenses, is the target premium less premiums for single life riders, and any premiums associated with aviation, avocation, occupational, or temporary extras. The target level premium is always less than the guideline annual premium as defined in Rule 6e-3(T)(c)(8).

7. certain fees and charges are deducted under the Contracts. Each Sub-Account is assessed a daily mortality and expense risk charge, as well as monthly administrative charges, cost of insurance charges, charges for optional rider benefits, charges to compensate Prudential for the risk in providing the death benefit guarantee,

<sup>1</sup> The Contract fund is defined as the total amount credited to a specific Contract and is equal to the sum of all amounts invested in the account and any earnings thereon, the amount invested in the fixed-rate option and earnings thereon, and the principal amount of any Contract debt.

<sup>2</sup> The Contract also allows the Contract owner to choose to pay guideline premiums that, if paid at the beginning of each Contract year, will keep the Contract in force for the life of the Contract regardless of investment performance (assuming no loans or withdrawals). As discussed below, the sales, charges for the Contract are, however, always computed with reference to the target level premium, not the issuer's higher guideline premium required to guarantee the death benefit for life.

and charges for special insurance class rating, if any. In addition to these daily and monthly charges, Prudential will charge the lesser of 2% or \$10 for each partial withdrawal, reserving the right to increase this charge to the lesser of 2% or \$25. Prudential also will charge up to \$25 for each transfer among investment options exceeding 12 in any Contract year. Prudential does not currently impose a charge for decreasing the basic insurance amount but reserves the right to charge up to \$25 for each decrease.

8. In addition, Prudential will deduct from each premium payment a charge for taxes attributable to premiums. This charge currently consists of two parts: (1) an amount based on an average of state and local premium taxes—presently, 2.5% of each premium payment; and (2) a charge to cover the estimated cost of an increase in Prudential's federal income tax liabilities that is measured by premiums received, and currently is 1.25% of each payment.

9. During the first 20 Contract years, Applicants also propose to deduct from premium payments a sales charge. This change will be equal to: (1) for the first Contract year, 30% of all premiums up to the amount of the target level premium and 4% of premiums paid in excess of the target level premium ("Excess Premiums"); and (2) for Contract years 2 through 20, 7.5% of all premiums paid in each Contract year to the target premium and 4% for Excess Premiums paid in each such Contract year. If the average age of the insureds is 58 years or more, these charges may be reduced to comply with the sales charge limitations contained in Rule 6e-3(T) under the 1940 Act.

#### Applicants' Legal Analysis

1. Section 27(a)(3) of the 1940 provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment. Section 27(a)(3) further provides that the sales charge deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e-3(T)(b)(13)(ii) provides a partial exemption from the prohibitions of Section 27(a)(3). Exemptive relief from the prohibitions of Section 27(a)(3) provided by Rule 6e-3(T)(ii) is available if the proportionate amount of sales charge deducted from any premium does not exceed the proportionate amount deducted from any prior premium payment, unless an increase is caused by reductions in the annual cost

of insurance or in sales charge for amounts transferred to a variable life insurance contract from another plan of insurance. Rule 6e-3(T)(b)(13)(ii) thus permits a decrease in sales load for any subsequent premium payment but not an increase.

3. Under the Contracts' sales load structure, premium payments that do not exceed the target level premium in a year will be subject to a 30% sales charge in the first year and 7.5% in each subsequent year up to the 20th Contract year. Excess Premium payments in each such year, however, will be subject to only a 4% sales charge. Consequently, if a Contract owner pays Excess Premiums in the Contract year, the Contract owner will pay one level of sales charge on the portion of the premium up to the target level premium and a lower sales charge on the Excess Premiums paid in that same Contract year. Applicants thus request an exemption from the requirements of Section 27(a)(3) and Rule 6e-3(T)(b)(13)(ii) because the Contracts' sales load structure would appear to violate the "stair-step" provisions in Section 27(a)(3) and because the exemption from Section 27(a)(3) provided by Rule 6e-3(T)(b)(13)(ii) does not seem to apply to the Contracts' sales load structure.

4. Applicants state that, had they chosen to impose the higher front-end sales load equally on all premium payments, the Contracts would qualify for exemptive relief under Rule 6e-3(T)(b)(13)(ii), subject to the maximum limits permissible under subparagraph (b)(13)(i) of the Rule. Applicants assert, however, that such a front-end charge would be less favorable to Contract owners than provided under the Contracts; under such a sales charge structure, sales load would be recovered by Prudential earlier than is the case under the Contracts' sales load structure. The sales charge structure under the Contracts benefits Contract owners by spreading Prudential's recovery of sales load over a longer period of time, and thereby permitting a greater portion of a Contract owner's Excess Premiums to be credited to account value.

5. In addition, Applicants represent that the sales load structure has been designed based on Prudential's operating expenses for the sale of the Contracts and, thus, reflects in part the lower overall distribution costs (including commissions paid to sales persons) that are associated with Excess Premiums paid over the life of a Contract. Applicants submit that it would not be in the best interests of a Contract owner to require the imposition of a higher sales load

structure than Applicants deem necessary to adequately defray their expenses.

6. applicants argue that Section 27(a)(3) was designed to address the abuse of periodic payment plan certificates under which large amounts of front-end sales loads were deducted so early in the life of the plan that an investor redeeming in the early periods would recoup little of his or her investment since only a small portion of the investor's early payments were actually invested. Applicants submit that the deduction of a reduced front-end sales load on Excess Premiums paid in any Contract year does not have the detrimental effect that Section 27(a)(3) was designed to prevent because a greater proportion of the Contracts' sales loads are deducted later than otherwise would be the case.

#### Conclusion

For reasons states above, Applicants submit that the requested exemptions from Section 27(a)(3) of the 1940 Act, and Rule 6e-3(T)(b)(13)(ii) thereunder, are in accordance with the standards of Section 6(c) of the 1940 Act, and are consistent with the protection of investors and the policies and purposes of the 1940 Act.

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

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 95-29616 Filed 12-5-95; 8:45 am]

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#### [Investment Company Act Release No. 21550; 811-6599]

#### First Prairie Municipal Income Fund; Notice of Application

November 29, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** First Prairie Municipal Income Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on November 2, 1995.

**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 applicant with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1995, and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

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Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or C. David Messman, Branch Chief, at (202) 942-0564 (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 from the SEC's Public Reference Branch.

#### Applicant's Representations

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3. Pursuant to unanimous written consent dated October 26, 1995, applicant's Board of Trustees determined that it was advisable and in the best interests of applicant to withdraw its registration statement with the SEC, cease to be registered as an investment company, and to liquidate its assets and terminate its existence as a Massachusetts business trust.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 95-29617 Filed 12-5-95; 8:45 am]

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#### [Investment Company Act Release No. 21551; 811-6597]

#### First Prairie Quality Income Fund; Notice of Application

November 26, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregulation under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** First Prairie Quality Income Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on November 2, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing.

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