

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the PSE's Arbitration Department responds to numerous requests for additional, but late, discovery that arise from the exchange of documents intended to be used by the parties at the hearing. Accordingly, the Exchange is proposing to amend PSE Rule 12.14(c) to increase the amount of time before a hearing where the parties are required to exchange documents from ten (10) days to twenty (20) days. By increasing the time for exchanging prehearing memoranda, the proposed rule change is intended to reduce the burden on the Arbitration Department and the arbitrators in responding to last minute discovery requests. The Securities Industry Conference on Arbitration approved the proposed rule change as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

2. Statutory Basis

The PSE believes the proposed rule change is consistent with the provisions of Section 6(b)(5)<sup>3</sup> of the Act because it is designed to facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and alleviate the burdens on the forum staff and arbitrators in dealing with such requests.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to

which the self-regulatory organization consents, the Commission will;

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Stock Exchange. All submissions should refer to File No. SR-PSE-95-31 and should be submitted by January 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Rel. No. IC-21610; No. 812-9740]

**Pruco Life Insurance Company, et al.**

December 19, 1995.

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

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

**APPLICANTS:** Pruco Life Insurance Company ("Pruco Life"), Pruco Life Insurance Company Insurance Company of New Jersey ("Pruco Life of New Jersey"), The Prudential Insurance Company of America ("Prudential"), Pruco Life Flexible Premium Annuity Account ("Separate Account"), and Pruco Securities Corporation ("Securities").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 22(d), 26(a)(2)(C), and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit: (1) The deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by Pruco Life, Pruco Life of New Jersey, or Prudential to support individual flexible premium annuity contracts ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts") (2) a waiver of the withdrawal charge for Contracts or Future Contracts issued in connection with the waiver of withdrawal charges endorsement ("Critical Care Access") and (3) a reduction of the withdrawal charge to Contract and Future Contract owners age 84 or older to insure compliance with state non-forfeiture laws.

**FILING DATE:** The application was filed on August 25, 1995, and an amended and restated application was filed on December 4, 1995. In addition, Applicants have represented that they will file an amendment during the notice period to make the representations contained herein.

**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 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 January 15, 1996, 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 SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Clifford E. Kirsch, Esq., The 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, both at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

<sup>3</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> 17 C.F.R. 200.30-3(a)(12)

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

#### Applicant's Representations

1. Pruco Life, a stock life insurance company, is organized in Arizona, and licensed to do business in the District of Columbia and all states of the United States except New York. Pruco Life is a wholly-owned subsidiary of Prudential.

2. Pruco Life of New Jersey, a stock life insurance company, is organized in New Jersey. Pruco Life of New Jersey is a wholly-owned subsidiary of Pruco Life.

3. Prudential, a mutual life insurance company, is organized in New Jersey.

4. Securities will serve as the principal underwriter of the Contracts. Securities, an indirect wholly-owned subsidiary of Prudential, is registered under the Securities Act of 1934 ("1934 Act") as a broker-dealer, and is a member of the National Association of Securities Dealers. The Contracts will be sold by registered representatives of Securities. Securities also may enter into agreements with other brokers registered under the 1934 Act who qualify to sell the Contracts.

5. The Separate Account is a separate account established by Pruco Life to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

6. Pruco Life has established for each investment option offered under the Contracts a Separate Account subaccount ("Subaccount"), which will invest solely in a specific corresponding portfolio of certain designated investment companies ("Funds"). The Funds will be registered under the 1940 Act as opened management investment companies. Each portfolio of the Funds will have separate investment objectives and policies.

7. The Contracts also provide for a fixed-rate option which guarantees a stipulated rate of interest for a one-year period, and a market-value adjustment option which guarantees a stipulated rate of interest if held for a seven year period.

8. The Contracts are individual flexible premium annuity contracts. The Contracts may be purchased with an initial purchase payment of \$10,000 or more. The minimum subsequent purchase payment for the Contracts is \$1000. Net purchase payments may be allocated to one or more of the Separate Account Subaccounts, the fixed-rate

option, or to the market-value adjustment option.

9. The Contracts provide for a series of annuity payments beginning on the annuity date. The Contract owner may select from several annuity payout options.

10. The Contracts provide for a death benefit if the annuity or the survivor of two co-annuitants dies during the accumulation period. The death benefit is the greater of: (1) The accumulated value under the Contract fund as determined on the date of receipt due proof of death by Pruco Life; (2) 100% of all premium payments made by the Contract owner under the Contract reduced by the amount of any partial withdrawals (including withdrawal charges); or (3) the greatest of the Contract fund values calculated on every third Contract anniversary, reduced by all subsequent withdrawals and withdrawal charges.

11. Certain charges and fees are assessed under the Contracts. Pruco Life will deduct an administration charge from a Contract owner's account value to reimburse it for expenses relating to the administration and maintenance of the Contract. The administrative expense charge is deducted daily from the assets in each of the Subaccounts, and is equivalent to an effective annual rate .15%. Although there is no current intention to do so, Pruco Life reserves the right to impose an additional charge of up to \$25 annually and upon surrender on Contracts with less than \$50,000.

12. Applicants represent that the administration charges will not increase during the life of the Contracts. In addition, Applicants represent that these charges are made with no anticipation of profit, and that the administrative charges comply with Rule 26a-1.

13. A withdrawal charge may be made upon full or partial withdrawals under the Contract. The withdrawal charge will be imposed for expenses related to the sales and distribution of the Contracts. The amount of the withdrawal charge decreases annually from 7% to 0% over 8 Contract years. For the purposes of determining the withdrawal charge, withdrawals will be allocated to purchase payments on a first-in, first-out basis so that all withdrawals are allocated to purchase payments to which the lowest (if any) withdrawal charge applies. In addition, a portion of the purchase payments may be withdrawn without the imposition of any charge ("Charge Free Amount"). This Charge Free Amount is equal to 10% of all purchase payments less all withdrawals of the purchase payments

previously made plus the Charge Free Amount available in the immediately preceding Contract year not withdrawn in that year.

14. No withdrawal charge is assessed if withdrawals are used to effect an annuity based on the life of an annuitant. Contracts issued to annuitants age 84 and older are subject to a reduced withdrawal charge.

15. In those states which have approved a Critical Care Access endorsement, all or part of any withdrawal and annual administrative charges associated with a full or partial withdrawal, or any annuitization or withdrawal charge due on the annuity date, will be waived following the receipt of due proof that the annuitant or co-annuitant (if applicable) has been confined to an eligible nursing home or hospital for a period of at least 3 months, or a physician has certified that the annuitant or co-annuitant has 6 months or less to live.

16. Pruco Life proposes to deduct a daily mortality and expense risk charge. Pruco Life represents that this charge is equal to an effective annual rate of 1.25% of the net asset value of the Separate Account, and that it will not increase. Of this amount, approximately .80% is for mortality risks and .45% is for expense risks.

17. Pruco Life assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring Pruco Life to pay out more in annuity income than it had planned. In addition, Pruco Life is contractually obligated to provide a death benefit prior to the annuity date. Thus, Pruco Life assumes the risk that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by Pruco Life is that the Contract administration charge will be insufficient to cover the cost of administering the Contracts.

18. In the event the mortality and expense risk charges are more than sufficient to cover Pruco Life's costs and expenses, any excess will be a profit to Pruco Life.

19. A charge may be deducted for premium taxes and any taxes attributable to purchase payments. This may include any state or local premium taxes, any federal premium taxes, and any federal, state, or local income, excise, business or any other type of tax (or component thereof) measured by, or based upon, the amount of purchase payment received by Pruco Life. Applicants represent that premium taxes currently range from 1% to 5%.

Furthermore, Pruco Life reserves the right to impose a charge of up to a maximum of .3% for federal income taxes measured by premiums upon each purchase payment received under the Contract, in those states where approval has been obtained. At present, no such charge is being made in any state.

20. No transfer fee will be charged for the first 12 transactions (excluding dollar cost averaging transfers) effecting transfers in any contract year.

Subsequent transfers within a Contract, year, however, will be assessed a fee of \$25 per transfer.

21. A market-value adjustment ("MVA") will be made if a Contract owner withdraws or transfers money before its maturity date from a division of a fixed-rate investment option that is being credited with a unique guaranteed interest rate ("interest cell"). The MVA may increase or decrease either the amount transferred or the amount remaining in an interest cell after a partial withdrawal.

#### Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation of the 1940 Act to the extent that the 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.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank, and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the net assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.25% charge for the assumption of mortality and expense risks.

4. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly

available information about similar industry products, taking into consideration such factors as the current charge levels, the existence of expense charge guarantees, and guaranteed annuity rates. Pruco Life will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representations, and that the mortality and expense risk charges are reasonable, with respect to the Future Contracts offered by the Separate Account of Other Accounts.

5. Pruco Life has concluded that there is a reasonable likelihood that the Separate Account's and Other Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. Pruco Life represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representations with respect to the Future Contracts offered by the Separate Account or Other Accounts.

6. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

7. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter, or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a current offering price described in the prospectus.

8. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from the provisions of Section 22(d) to the extent necessary to permit Applicants to reduce the withdrawal charge for annuitants 84 or older, and to waive the withdrawal charge for Critical Care Access.

9. Applicants submit that the proposed reduction and waiver are consistent with the policies of Section

22(d) and the rules promulgated thereunder. One of the purposes of Section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Eligibility for the reduction of fees will be based on advanced age to comply with state non-forfeiture laws, and eligibility for the Critical Care Access fee waiver will be based on the Contract or Future Contract owner experiencing the defined medically related contingencies. Therefore, these benefits will not unfairly discriminate among Contract and Future Contract owners. Applicants submit that the reduction in fees and fee waiver is advantageous to Contract and Future Contract owners by permitting them, upon experiencing such contingencies, to make withdrawals from the Contract or Future Contract with the imposition of either a reduced fee or no fee, respectively. Applicants represent that the reduction in charges and waiver will not result in dilution of the interests of any other Contract and Future Contract owners. Applicants also submit that reducing and waiving the withdrawal fee under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

10. Applicants represent that the reduction and waiver of the withdrawal charge will be uniformly available to all eligible Contract and Future Contract owners, except where prohibited by state law, and that these provisions will be adequately described in the prospectus of the Contracts and Future Contracts.

11. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.

Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses

and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants thus assert 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.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and 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.

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

Margaret H. NcFarland,  
Deputy Secretary.

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BILLING CODE 8010-01-M

#### [Investment Company Act Release No. 21609; 812-9686]

#### Stein Roe Income Trust, et al.; Notice of Application

December 19, 1995.

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

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

**APPLICANTS:** Stein Roe Income Trust, Stein Roe Investment Trust, Stein Roe Municipal Trust, and SR&F Base Trust (collectively, the "Trusts"), and Stein Roe & Farnhman Incorporated (the "Adviser").

**RELEVANT ACT SECTIONS:** Order under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit the Trusts to borrow money from each other through a credit facility.

**FILING DATES:** The application was filed on July 25, 1995 and amended on November 8, 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 January 16, 1996, 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. Applicants: One South Wacker Drive, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or Robert A. Robertson, 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.

#### Applicants' Representations

1. Stein Roe Income Trust, Stein Roe Investment Trust, and Stein Roe Municipal Trust are organized as Massachusetts business trusts. SR&F Base Trust is organized as a Massachusetts common law trust. Each Trust has multiple series. Each Trust has entered into an investment advisory agreement with the Adviser with respect to each existing series. The Adviser is a wholly-owned indirect subsidiary of Liberty Financial Companies, Inc., which is a majority owned indirect subsidiary of Liberty Mutual Insurance Company. Applicants request that any relief also apply to any registered open-end investment companies established or acquired in the future, for which the Adviser or a company controlling, controlled by, or under common control with the Adviser, acts as investment adviser, (the "Future Funds," and together with the existing series, the "Funds").

2. The Trusts have entered into a loan agreement with their custodian, State Street Bank and Trust Company ("State Street") under which State Street may,

but is not obligated to, lend money to the Trusts for temporary or emergency purposes. The maximum aggregate credit available under the agreement is \$75 million. The Trusts seek to reduce the middleman function of banks by entering into a master loan agreement with each other (the "Credit Facility") that would permit the Funds to lend money directly to, and to borrow from, each other to meet the temporary borrowing needs of the borrowing Funds (the "Interfund Loans"). The form of master loan agreement attached to the application is referred to as the "Interfund Loan Agreement."

3. The Credit Facility is intended to reduce substantially the Funds' borrowing costs and to enhance the ability of the Funds to earn higher rates of interest on their short-term lendings. Although the Credit Facility would substantially reduce the Funds' reliance on bank credit arrangements, the Trusts would continue to maintain existing loan agreements and to borrow money from banks. The terms and conditions of the loan agreement with State Street would serve as a guideline for making Interfund Loans.

4. The Credit Facility is likely to provide the Funds with significant savings at times when the cash position of a Fund is insufficient to meet temporary cash requirements. This situation generally arises when shareholder redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days. However, shareholder redemption requests are normally effected immediately. Therefore, the Funds need a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

5. While bank borrowings will continue to be available to supply such liquidity, the rates charged under the Credit Facility would be below those offered by State Street on short-term loans. Likewise, Funds making cash loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term repurchase agreements. Thus, the Credit Facility would benefit both those Funds that are borrowers and those Funds that are lenders.

6. The interest rate to be charged on Interfund Loans (the "Interfund Rate") would be determined daily and would be the mean of (a) the "Repro Rate," as defined below, and (b) the "Bank Loan Rate," as defined below. The Repro Rate on any day would be the highest interest