

and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collection of information discussed below.

- Regulation S-P—Privacy of Consumer Financial Information.

The Commission adopted Regulation S-P (17 CFR part 248) under the authority set forth in section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804), sections 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78q, 78w), sections 31 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-30(a), 80a-37), and sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-4, 80b-11). Regulation S-P implements the requirements of Title V of the Gramm-Leach-Bliley Act ("Act"), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties ("privacy notice"). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option ("opt out notice"). The privacy notices required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S-P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers ("covered entities"). The Act and Regulation S-P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most

covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S-P. Therefore, few consumers are required to respond to opt out notices under the rule.

Currently, there are approximately 20,434 covered entities (approximately 6,280 registered broker-dealers, 4,939 investment companies, and, out of a total of 10,210 registered investment advisers, 9,215 registered investment advisers that are not also registered broker-dealers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 11,219 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of \$2,424 (32 hours of professional time at \$70 per hour plus 8 hours of clerical or administrative time at \$23 per hour) and each of the approximately 9,215 covered entities that is an investment adviser but not also a broker-dealer requires an estimated 5 hours at a cost of \$303 (4 hours of professional time at \$70 per hour plus 1 hour of clerical or administrative time at \$23 per hour). Thus, the total compliance burden per year is 494,835 hours (40 hours for 11,219 broker-dealers and investment companies, and 5 hours for 9,215 investment advisers that are not also broker-dealers  $\times$  11,219 = 448,760,  $5 \times 9,215 = 46,075$ , and  $448,760 + 46,075 = 494,835$ ), and \$29,987,001 ( $\$2,424 \times 11,219 = \$27,194,856$ ,  $\$303 \times 9,215 = \$2,792,145$ , and  $\$27,194,856 + \$2,792,145 = \$29,987,001$ ).

The wage estimates of \$70 per hour for professional time and \$23 per hour for clerical or administrative time used in the foregoing calculations are based on estimated mean hourly wages of \$68.23 for lawyers and \$22.56 for all other legal support workers in the U.S. Department of Labor's Bureau of Labor Statistics' November 2004 National Industry-Specific Occupational Employment and Wage Estimate, NAICS 523100—Securities and Commodity Contracts Intermediation and Brokerage (available online, as of March 2, 2006, at [http://www.bls.gov/oes/current/naics4\\_523100.htm](http://www.bls.gov/oes/current/naics4_523100.htm)) adjusted upward for inflation by 2.5% based on the percentage increase in the employment cost indexes for white collar workers and for administrative support, including clerical, workers from December 2004 to December 2005, as reported in the U.S. Department of Labor's Bureau of Labor Statistics' Employment Cost Index for wages and

salaries for private industry workers by industry and occupational group (not seasonally adjusted) (available online, as of March 2, 2006, at <http://www.bls.gov/news.release/eci.t06.htm>).

Compliance with Regulation S-P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S-P does not involve the collection of confidential information. Regulation S-P does not have a record retention requirement per se, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a-3 and 17a-4. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (1) the Desk Officer for the SEC, Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: June 5, 2006.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-9152 Filed 6-12-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27389; File No. 812-13274]

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

June 6, 2006.

**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, as amended (the "Act") granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

**APPLICANTS:** Pruco Life Insurance Company ("Pruco Life"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey," and collectively with Pruco Life, the "Insurance Companies"), Pruco Life Flexible Premium Variable Annuity Account ("Pruco Life Account"); 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").

**SUMMARY OF APPLICATION:** Applicants seek an order amending an existing order under section 6(c) of the Act, exempting them from section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to permit, under specified circumstances, the recapture of certain credits previously applied to purchase payments made under (1) the Prudential Premier Variable Annuity X Series ("X Series Contract"), or (2) variable annuity contracts issued by the Insurance Companies that are substantially similar in all material respects to the X Series Contract ("Future Contracts"). Applicants also request that the order extend to any NASD member broker-dealer controlling, controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the X Series Contracts offered through the Accounts or any other separate accounts established in the future by the Insurance Companies ("Future Accounts") to support Future Contracts.

**FILING DATE:** The application was filed on January 18, 2006, and amended on April 5, 2006.

**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 Secretary of the Commission 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 July 3, 2006, 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 requester'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, SEC, 100 F Street, NE., Washington, DC 20549-1090. 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:** Sally Samuel, Senior Counsel, or Joyce M. Pickholz, 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 may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551-8090).

#### Applicants' Representations

1. In Investment Company Act Release Nos. 25999 (April 9, 2003) (notice) and 26043 (April 30, 2003) (order), the Commission granted an order (the "2003 Order") that permits, under specified circumstances, the recapture of a 6% bonus payment (a "Credit") applied to certain purchase payments made under deferred variable annuity contracts that the Insurance Companies issue through the Accounts, as well as contracts that the Insurance Companies may in the future issue through the Accounts or any future account. The 2003 Order applied to the versions of the Strategic Partners Annuity One contract (File Nos. 333-37728 and 333-49230).

2. The 2003 Order, in turn, amended a prior exemptive order (the "2002 Order") that contemplated the granting, and recapture under certain circumstances, of a Credit of 3%, 4%, or 5%, depending on the amount of the purchase payment and the age of the owner. See Investment Company Act Release Nos. 25660 (July 15, 2002) (notice) and 25695 (August 12, 2002) (order). Applicants wish to leave the 2002 Order and the 2003 Order intact, thus allowing them to continue to recapture Credits under the versions of the Strategic Partners Annuity One contracts.

3. In this application, Applicants seek an order allowing them to recapture credits under a new variable annuity contract, the X Series Contract. Applicants in this application are identical to the applicants in the 2002 Order and the 2003 Order.

4. Applicants request that the amended order extend to any NASD member broker-dealer controlling, controlled by, or under common control with, the Insurance Companies, whether existing or created in the future, that

serves as a distributor or principal underwriter of the X Series Contracts offered through the Accounts or any Future Account ("Broker-Dealers"). Applicants note that the X Series Contracts will be sold through such Broker-Dealers and also through broker-dealers that are NASD-registered and not affiliated with the Insurance Companies or the Broker-Dealers (the "Unaffiliated Broker-Dealers"). Each Unaffiliated Broker-Dealer will have entered into a dealer agreement with PIMS or an affiliate of PIMS prior to offering the X Series Contracts.

5. Applicants also request that the amended order sought herein apply to any other separate account of the Insurance Companies currently existing that will support any Future Contracts or any Future Accounts established to support Future Contracts.

6. The X Series Contracts are flexible premium deferred variable annuity contracts that are registered on Form N-4 (File Nos. 333-130989 and 333-131035). The minimum initial purchase payment is \$10,000, and any additional purchase payment must be at least \$100 (except for contract owners who participate in certain periodic purchase payment programs). The maximum issue age for the X Series Contract is 75, meaning that, for (i) contracts with one owner, the owner must be 75 or younger (ii) contracts that are jointly-owned, the oldest owner must be 75 or younger, and (iii) for entity-owned contracts, the annuitant must be 75 or younger.

7. There are various insurance features under the X Series Contract and charges associated with those features. There is a 1.55% annual insurance charge that is deducted daily from the unit value of each subaccount, consisting of 1.40% for mortality and expense risks and 0.15% for administrative expenses. For X Series Contracts valued less than \$100,000, there is a maintenance fee equal to the lesser of \$35 (\$30 in New York) or 2% of unadjusted account value, which is assessed annually on the X Series Contract's anniversary date or upon surrender. The maintenance fee is deducted pro rata from both the variable investment options and the fixed option under the X Series Contract. The applicant insurers impose no fee with respect to the first 20 transfers in an annuity year, but after the 20th such transfer, currently impose a fee of \$10 per transfer. There is a contingent deferred sales charge ("CDSC") under the X Series Contract, the amount of which is based on the "age" of each purchase payment being withdrawn. During the first year after a purchase payment is made, the CDSC is equal to

9%. In subsequent years, the CDSC is as follows: 8.5% in year 2, 8% in year 3, 7% in year 4, 6% in year 5, 5% in year 6, 4% in year 7, 3% in year 8, and 2% in year 9. After nine years have elapsed from the date on which the purchase payment was made, no CDSC is imposed with respect to that purchase payment. No CDSC is imposed in connection with the calculation of a death benefit payment. In addition, no CDSC is imposed on the portion of a withdrawal that can be taken as part of the free withdrawal feature of the X Series Contract. The free withdrawal amount available in each annuity year is equal to 10% of the sum of all purchase payments made during the year and prior to the beginning of that year, except that (i) only purchase payments that would be subject to a CDSC are included in that calculation and (ii) a free withdrawal amount that is not used in a given year cannot be carried over to future years. For purposes of calculating the CDSC, partial withdrawals are deemed to be taken first from any free withdrawal amount and thereafter from purchase payments (on a first-in, first-out basis). Where permitted by law, an X Series Contract owner may request to surrender without a CDSC upon the occurrence of a medically-related contingency event, such as a diagnosis of a fatal illness (a "Medically-Related Surrender").

8. An X Series Contract owner may select one or more of several optional benefits. The Guaranteed Minimum Income Benefit is subject to a charge of 0.50% per year of the average protected income value during each year, and the charge is deducted annually in arrears each annuity year. The Lifetime Five Income Benefit (which allows the owner to withdraw a specified protected value through periodic withdrawals or a series of payments for life) is subject to a charge of 0.60% annually of the average daily net assets in the sub-accounts. The X Series Contract also offers a variant of the Lifetime Five benefit (called Spousal Lifetime Five) which, for a charge of 0.75% annually, guarantees income until the second-to-die of two individuals married to each other. The Highest Daily Value death benefit (which provides a death benefit equal to the higher of the basic death benefit or the "highest daily value") is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. Finally, the combination 5% roll-up/HAV death benefit (which refers to a death benefit equal to the greater of (i) the "highest anniversary value" or (ii) purchase payments plus credits, adjusted for withdrawals, appreciated at

5% annually) is subject to a charge of 0.50% annually of the average daily net assets of the sub-accounts. (For New York contracts, the only optional death benefit will be the Highest Anniversary Value Death Benefit).

9. In addition to the optional insurance features, the X Series Contract offers several optional administrative features at no additional cost (e.g., auto rebalancing, systematic withdrawals).

10. The X Series Contract offers both variable investment options and a one-year fixed rate option. The X Series Contract also may offer an enhanced, dollar cost averaging fixed interest rate option. At present, only portfolios of American Skandia Trust are available as variable investment options. Under the X Series Contract, Applicants reserve the right to add new underlying funds and series, and to substitute new portfolios for existing portfolios (subject to Commission approval).

11. An owner choosing to annuitize under the X Series Contract will have only fixed annuity options available. Those fixed annuity options include annuities based on a single measuring life or joint lives, based on a single measuring life or joint lives with a period certain (e.g., 5 years, 10 years, or 15 years), or based on a period certain only. If the owner fails to choose an annuity option, the default is to a life annuity with 10 years certain. The latest annuitization date is the first day of the month immediately following the annuitant's 95th birthday.

12. The bonus credit under the X Series Contract (the "New Credit") will vary depending on the age of the older of the owner and any joint owner on the date that the purchase payment is made, but not on the amount of the purchase payment. Specifically, if the elder owner is 80 or younger when a purchase payment is made, the New Credit will equal 5%, regardless of the purchase payment amount. If the elder owner is between ages 81 and 85 when the purchase payment is made, then the New Credit will be 3%, regardless of the amount of the purchase payment. Applicants would recapture the New Credit if (i) the X Series Contract is surrendered during the free look period, or (ii) the New Credit was applied within 12 months prior to death or (iii) the New Credit was applied within 12 months prior to a request for a Medically-Related Surrender. No CDSC is applied in connection with any transaction in which the New Credit would be recaptured. Applicants seek an amended order pursuant to section 6(c) of the Act exempting them from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to

the extent necessary to permit an Insurance Company to recapture the New Credit described herein in the instances described in the immediately preceding sentence.

13. Finally, the X Series Contract will offer a "longevity credit" that will be paid on the 10th annuity anniversary and each annuity anniversary thereafter. The longevity credit will equal 0.40% of the sum of all purchase payments (less withdrawals) that are more than 9 years old. Applicants are not seeking an exemption to recapture the longevity credit.

### Applicants' Legal Analysis

1. Section 6(c) of the 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 Act and the rules promulgated under the Act 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 Act.

2. Applicants request that the Commission, pursuant to section 6(c) of the Act, issue an order amending the 2003 Order to the extent necessary to permit the recapture of the New Credit under the circumstances described above. 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 Act.

3. Applicants submit that the recapture of the New Credit 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 2003 Order. The New Credit will be recaptured only if the owner (i) exercises his/her free look right (ii) dies within 12 months after receiving a New Credit or (iii) requests a medically-related surrender within 12 months after receiving a New Credit. The amounts recaptured equal the New Credits provided by each Insurance Company from its own general account assets.

4. When the Insurance Companies recapture the New 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 New Credit amount has not vested. With respect to New Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a New Credit amount under an

X Series Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the New Credit during the free look period, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit. Applicants also note that the Contract owner is entitled to retain any investment gain attributable to the New Credit, even if the New Credit is ultimately recaptured. Furthermore, the recapture of New Credits if death or a Medically-Related Surrender occurs within 12 months after the receipt of a New Credit is designed to provide the Insurance Companies with a measure of protection against "anti-selection." The risk here is that an owner, with full knowledge of impending death or serious illness, will make very large payments and thereby leave the Insurance Companies less time to recover the cost of the New Credit, to their financial detriment.

5. Applicants submit that the provisions for recapture of the New Credit under the X Series Contract do not, and any such Future Contract provisions will not, violate section 2(a)(32) and 27(i)(2)(A) of the Act, and rule 22c-1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the 2003 Order and other Commission precedent.

6. 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 X Series Contracts and Future Contracts, and underwritten or distributed by PIMS or other broker-dealers, 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 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.

7. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts that seek to rely on the order issued pursuant to the application will be substantially similar to the X Series 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 Act and that an order amending the 2003 Order should, therefore, be granted.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-9153 Filed 6-12-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53935; File No. SR-CBOE-2003-41]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To List and Trade Options on Corporate Debt Securities

June 2, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. On March 1, 2003, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> CBOE filed Amendment No. 2 to the proposed rule change on August 24, 2005.<sup>4</sup> CBOE filed Amendment No. 3 to the proposed rule change on May 26, 2006.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, CBOE replaced and superseded the original Exhibit A, which contained its rule text, in its entirety. In addition, CBOE provided explanatory commentary in response to questions raised by Commission staff regarding the proposal including, but not limited to, listing and maintenance standards, strike price intervals, and margins.

<sup>4</sup> Amendment No. 2 replaced and superseded the Exchange's original Form 19b-4 in its entirety.

<sup>5</sup> Amendment No. 3 replaced and superseded the Exchange's original Form 19b-4 in its entirety.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to introduce for trading a new type of option, called "Corporate Debt Security Options" ("CDSOs"), which would be options based on corporate bonds. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.com>), at the principal office of CBOE, and at the Commission's Public Reference Room.

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

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

Over-the-counter ("OTC") transactions in corporate debt securities (e.g., bonds and notes) recently have been become subject to enhanced transparency and now are reported publicly through the NASD's Trade Reporting and Compliance Engine ("TRACE") system. This enhanced transparency and price reporting has given rise to an OTC market in options on corporate debt securities over the past few years. CBOE believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for member firms and their customers.

The Exchange understands that products similar to CDSOs that are proposed in this rule filing are currently traded in the OTC market by hedge funds, proprietary trading firms, and a few very large fixed income funds. These market participants have indicated that there could be room for significant growth in OTC trading of options on corporate debt securities as transparency further improves in the market for the underlying corporate debt securities and if a listed option product were introduced. CBOE expects that users of these OTC products would be among the primary users of exchange-traded CDSOs. CBOE states that its