

No. 333-75702). PLIC's Strategic Partners FlexElite variable annuity has a withdrawal charge, equal to 7% of the amount withdrawn (in excess of the permitted free withdrawal amount), that applies in each of the first three years of the contract. No withdrawal charge applies after the third contract year, unless the contract owner makes the credit election described below. Before each contract's third contract anniversary, PLIC will offer the owner of such contract the opportunity to receive a credit equal to 1% of the contract value as of the third contract anniversary (the "1% Credit"). If the owner chooses to receive the 1% Credit, PLIC will re-impose the three-year, 7% surrender charge schedule discussed above. PLIC also will offer the 1% Credit before the sixth anniversary of the contract, and will re-impose the three-year, 7% surrender charge schedule on any contract owner who accepts that offer. It is the offer of the 1% Credit before the third and sixth contract anniversaries, coupled with the re-imposition of the three-year, 7% surrender charge schedule, that arguably causes the FlexElite Exchange Program to need an exemption from section 11(a) of the Act. However, apart from the re-imposition of the surrender charge schedule on contract owners who accept the 1% Credit, a contract owner will experience no change in contract features as a consequence of accepting the 1% Credit.

30. PLNJ has filed with the Commission a Form N-4 registration statement to register its version of the Strategic Partners FlexElite variable annuity (File No. 333-99275). The 1% Credit, surrender charges, and re-imposition of surrender charge provisions of the PLNJ version are substantially similar in all material respects to those under the PLIC version of Strategic Partners FlexElite. PLNJ's version of Strategic Partners FlexElite otherwise is substantially similar in all material respects to the PLIC version.

31. PLIC and PLNJ seek Commission approval of the FlexElite Exchange Program under section 11(a) of the Act. To the extent described below, Applicants would adhere to the conditions set forth below with respect to the Exchange Offer. By adhering to those conditions, Applicants believe that contract owners will be fully apprised of the fact that the economic benefits of accepting the 1% Credit would be negated if the owner surrenders his/her contract during the ensuing three-year surrender charge period. Specifically, Applicants represent that they will adhere to the offering letter requirements set forth in

condition 1 below, except that (a) they will not contrast an old contract with a new contract because no new contract will be issued and (b) they will not reserve any right to terminate the FlexElite Exchange Program. Applicants also will adhere to the terms of condition 2 below. Applicants will adhere to the terms of condition 3 below, except as respects the reference in that condition to the contract number of the old and new contracts (*i.e.*, there is only a single security, having a single 1933 Act registration number, involved). Finally, Applicants will comply with condition 4 below, in that the offering letter will disclose in concise, plain English the one feature of the exchange that could be less favorable than not accepting the exchange offer (*i.e.*, the possible imposition of a surrender charge).

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. The offering letter will contain concise plain English statements that (a) the Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments, and (b) if the New Contract is surrendered during the initial CDSC period, a contract owner may be worse off than if he or she had rejected the Exchange Offer, because the amount of the CDSC will exceed the amount of the New Credit, and (c) disclose each aspect of the New Contract that will be less favorable than the Old Contracts, and (d) Applicants reserve the right to terminate the Exchange Offer at any time, and contract owners can call a toll-free telephone number for information concerning the current status of the Exchange Offer.

2. Prudential will provide a means of confirming that a contract owner choosing to make an exchange was told the statements in the offering letter (stated in Condition No. 1). Prudential will send the offering letter directly to eligible contract owners. A contract owner choosing to exchange will then complete and sign an internal exchange form, which will prominently restate in concise plain English the statements required in condition No. 1, and return it to Prudential. If the internal exchange form is more than two pages in length, Prudential will use a separate document to obtain contract owner acknowledgement of the statements required in condition No. 1.

3. Prudential will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this

condition No. 3, for review by the Commission upon request (a) records showing the level of exchange activity and how it relates to the total number of contract owners eligible to exchange (quarterly as a percentage of the number eligible), (b) copies of any form of offering letter and other written materials or scripts for presentations by representatives regarding the Exchange Offer (if Prudential prepared or approved the materials), including the date(s) used; (c) records showing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract number(s), Credit paid, registered representative's name, CRD number, firm affiliation, branch office address and telephone number, and name of the registered representative's broker-dealer, commission paid, internal exchange form (and separate document, if any, used to obtain contract owner acknowledgement of the statements required in condition No. 1) showing the name, date of birth, address and telephone number of the contract owner, and date internal exchange form (or separate document) was signed, amount of contract value exchanged, and persistency information relating to the New Contract (date surrendered and CDSC paid), and (d) logs showing any contract owner complaints about the exchange, state insurance department inquiries about the exchange, or litigation, arbitration or other proceedings regarding any exchange. The following information will be included on the log's date of complaint or commencement of proceedings, name, address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and persons named or involved in the complaint or proceeding.

Records specified in conditions No. 3(a) and (d) will be retained for six years from creation of the record. Records specified in condition No. 3(b) will be retained for six years after the date of last use, and records specified in condition No. 3(c) will be retained for two years from the end of the initial CDSC period of the New Contract.

4. The offering letter will disclose in concise plain English each aspect of the New Contracts that will be less favorable than the Old Contracts.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or any other