

open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange. Each Account is registered under the Act as a unit investment trust. Accordingly, the proposed Exchange Offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. Thus, unless the terms of the Exchange Offer are consistent with those permitted by Commission rule, Applicants may make the proposed Exchange Offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act.

2. As noted by the Commission when proposing rule 11a-3 under the Act, the purpose of section 11 of the Act is to prevent "switching". "Switching is a term of art that refers to the practice of inducing security holders of one Investment Company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." That type of practice was found by Congress to be widespread in the 1930's prior to adoption of the Act.

3. Rule 11a-2 adopted in 1983 under section 11 of the Act, by its express terms provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Variable annuity exchanges are permitted by rule 11a-2, provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to method prescribed in the rule. No exchange is permitted under rule 11a-2 that involves a security acquired or exchanged that has both a front-end and a deferred sales load. Adoption of rule 11a-3, which takes a similar approach to that of rule 11a-2, represents the most recent Commission action under section 11 of the Act. As with rule 11a-2, the focus of rule 11a-3 is primarily

on sales or administrative charges that would be incurred by investors for effecting exchanges.

The Exchange Offer

4. Applicants submit that the terms of the proposed Exchange Offer do not represent the abuses against which section 11 was intended to protect. The Exchange Offer was not created "solely for the purpose" of exacting additional sales charges. Rather, the Exchange Offer was designed to allow Prudential to compete on a level playing field with its competitors who are making bonus offers to its current Old Contract owners. No additional sales load or other fee will be imposed at the time of exercise of the Exchange Offer. In stark contrast with the 9-10% front-end commissions deducted in the "switching" exchanges that led to the adoption of section 11, each contract owner accepting the Exchange Offer will be provided with a New Credit, funded from Pruco Life's or PLNJ's general account. The effect of this Credit is to add the New Credit to the Old Contract value at the time of exchange to the New Contract value. An owner of an Old Contract who intends to continue to hold the contract as a long-term retirement planning vehicle will be significantly advantaged by the Exchange Offer because this New Credit will automatically be added to his or her contract value upon receipt of an enhanced New Contract. No sales charge will ever be paid on the amounts rolled over in the exchange unless the New Contract is surrendered before expiration of the New Contract's CDSC period.

5. Given the terms of the exchange, Applicants are precluded from relying on rule 11a-2. Accordingly, section 11(a) requires that Applicants submit the terms of the offer to the Commission for approval. Although section 11 does not prescribe specific standards for Commission approval of exchange offers, Applicants believe that the Exchange Offer presents less potential for the type of abuses that led to the adoption of section 11 than in connection with exchanges that would be permitted under rule 11a-2.

6. Applicant submit that the Exchange Offer is available to all eligible Old Contract owners on an entirely voluntary basis. While the Exchange Offer would not be in the interests of all contract owners (*i.e.*, those contract owners who anticipate a need to access a significant portion of their contract's value—more than 10% of net premium payments on an annual basis—sometime before the expiration of the initial CDSC period), the determination

of whether to accept or reject the Exchange Offer will be made by each contract owner. Applicants state that the terms of the proposed Exchange Offer are similar to offers currently being made to Old Contract owners by Prudential's competitors, which are permissible pursuant to a no-action letter issued to *Alexander Hamilton Funds*, SEC No-Action Letter (pub. avail. July 20, 1994). Accordingly, an offer such as the Exchange Offer would be permitted to be made by Prudential to owners of competitor's contracts under section 11(a) because the Accounts would be permitted to rely on the Alexander Hamilton letter. In fact, competitors can and do make such offers. The relief sought here would do no more than permit Prudential to offer its longstanding clients an enhanced contract and bonus similar to those they may be offered by Prudential's competitors.

7. Applicants represent that the description of the proposed Exchange Offer in letters to owners of Old Contracts and in the New Contracts' prospectus will provide full disclosure of the material differences in the applicable contracts. Assuming no premature surrender, the New Contracts should be no more expensive than the Old Contracts for contract owners unless they affirmatively choose to add additional features. In each case, existing contract owners would be offered a better contract and a Credit under terms that would be on an equal footing with similar offers made daily by Prudential's competitors.

8. Far from being a way to extract additional charges from investors, as contemplated by the prohibitions of section 11, Applicants state that the proposed Exchange Offer would provide an immediate and enduring economic benefit to investors. The New Credit would be applied immediately and the fact that asset-based charges would not be increased by the Exchange Offer, and that no contract maintenance charge would apply, also would contribute significantly to this enduring economic benefit. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would most likely be as a result of his or her own subsequent decision to surrender the New Contract during the new CDSC period. The Exchange Offer will provide much more explicit disclosure about the inadvisability of accepting the Exchange Offer if the owner may require access to a significant portion of the amount invested in the contract during the CDSC period than would be the case with competitors' offers that pose the identical risk. The disclosure provided