

in the offering materials will give owners of Old Contracts sufficient information to determine which contract will be best for them.

The Flexelite Exchange Program

9. Applicants submit that the legal rationale supporting the FlexElite Exchange Program is comparable to that posited for the Exchange Offer. The FlexElite Exchange Program was not designed "solely for the purpose" of exacting additional sales charges. Rather, that Program is designed to allow investors who do not anticipate making a withdrawal within the succeeding three years to receive a 1% addition to their contract value. As required by the conditions set forth above, Applicants will give investors ample notice of the fact that acceptance of the 1% Credit carries with it the reimposition of the three year surrender charge. Applicants anticipate that through that notice, investors who envision needing to make a significant withdrawal within the succeeding three years will be steered away from accepting the 1% Credit. On the other hand, investors who accept the 1% Credit and make no withdrawals during the succeeding three year period will receive an immediate monetary benefit in the form of the Credit, but will avoid any withdrawal charge.

10. According to the Applicants, approval of the FlexElite Exchange Program also is warranted because it will promote competition in the variable annuity marketplace. The promotion of competition is a relevant consideration in evaluating whether the terms of an exchange offer are consistent with the protection of investors. Applicants state that several of their competitors currently offer variable annuity products featuring a "persistency bonus" coupled with a reimposition of the withdrawal charge. By granting the requested relief, the Commission will permit Applicants to offer and operate the Strategic Partners FlexElite contract as described herein—adding that product to the menu of such variable annuities already available in the marketplace.

11. Applicants submit that the Exchange Offer does not present any duplication of sales loads or administrative fees to those Contract owners who intend to hold their Contracts as long-term retirement vehicles. Similarly, the FlexElite Exchange Program will entail no reassessment of surrender charges on a contract owner who accepts the 1% Credit, so long as the owner holds the contract longer than the three-year surrender charge period. Applicants

also submit that the Exchange Offer and FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act, do not involve any of the switching abuses that led to the adoption of section 11, and assure an immediate and enduring economic benefit to persisting Contract owners. Furthermore, permitting Contract owners to evaluate the relative merits of the Old and New Contracts under the Exchange Offer and to select the one that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Accordingly, approval of the terms of the Exchange Offer and the FlexElite Exchange Program is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Recapture of Credit Under the New Contracts

12. 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 thereunder 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. Applicants request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions requested below with respect to the New Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protections of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants seek exemption pursuant to section 6(c) 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 Pruco Life and PLNJ to recapture all or the unvested portion of certain Credits in the following instances: (a) The contract is canceled under the free look provision; or (b) death occurs within one year of a purchase payment where the death benefit amount is equal to contract value. Applicants represent that it is not administratively feasible to track the Credit amount in the subaccounts after the Credit is applied. Accordingly, the asset-based charges applicable to the subaccounts will be assessed against the entire amounts held in the respective subaccounts, including the Credit amount, during the period when the

owner's interest in the credit is not completely vested. As a result, during such periods, the aggregate asset-based charges assessed against an owner's contract value will be higher than those that would be charged if the owner's contract value did not include the Credit. Applicants note, however, that any earnings attributable to Credit amounts vest immediately and are not subject to recapture.

14. Section 27 of the Act provides that such section does not apply to any registered separate account funding variable insurance contracts, or the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security.

15. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Applicants submit that the recapture of the credit amount in the circumstances set forth in this Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. With respect to Credit recaptures upon exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a Credit amount under a contract that has been returned for a refund after a period of only a few days. If Pruco Life and PLNJ could not recapture the Credit, individuals could purchase a contract with no intention of retaining it, and simply return it for a quick profit. Furthermore, the recapture of Credits relating to purchase payments made within one year prior to death or after death is designed to provide Pruco Life and PLNJ with a measure of protection against "anti-selection". The risk here is that, rather than holding the New Contract for a number of years, an owner will exchange an existing contract for a New Contract shortly before death, thereby leaving Pruco Life and PLNJ less time to recover the cost of the Credits applied, to their financial detriment. Again, the amounts recaptured equal the Credits provided by Pruco Life and PLNJ from their own general account assets and any gain would remain as part of the New Contract's value when annuity payments begin. For the foregoing