

## Applicants' Representations

1. On August 12, 2002, the Commission issued the Existing Order exempting certain transactions of Applicants from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c-1 thereunder to permit, under specified circumstances, the recapture of certain credits applied to purchase payments made under certain deferred variable annuity contracts ("Strategic Partners Annuity One" or "Contracts") and Future Contracts described in the Existing Order.<sup>1</sup>

2. The Existing Order allows the Insurance Companies to recapture credit amounts ("Credits") that differ depending upon the purchase payment amount and the contract owner's age when the purchase payment is made. Specifically, a 4% Credit is applied to purchase payments less than \$250,000 and a 5% Credit is applied to purchase payments of \$250,000 or more if the Contract owner is age 80 or younger (for jointly-owned Contracts, if the older owner is 80 or younger) when the purchase payment is made. If the Contract owner is age 81 or older (for jointly-owned Contracts, if the older owner is 81 or older) when the purchase payment is made, a 3% Credit is applied, regardless of the amount of the purchase payment. These Credits generally vest upon the expiration of the free look period. However, if a Credit is applied to a purchase payment made within one year prior to death, and the death benefit amount is equal to contract value, then any Credit attributable to that purchase payment will be recaptured in calculating the death benefit payable under the Contracts.

3. Applicants seek to amend the Existing Order in one respect. Namely, the Insurance Companies would add a new "tier" to the above-referenced bonus structure, under which they would grant a Credit equal to 6% of any purchase payment of \$1 million or more made by a Contract owner aged 80 or younger (for jointly-owned Contracts, if the older owner is aged 80 or younger). The 6% Credit would vest upon the expiration of the free look period (except for certain 6% Credits applied within one year prior to death). As to recapture upon death, if a 6% Credit is applied to a purchase payment made within one year before death, and the death benefit amount is equal to Contract value, then the Credit attributable to that purchase payment

will be recaptured in calculating the death benefit amount. However, there will be no such recapture if the death benefit amount is equal to the roll-up value, the step-up value, the greater of roll-up and step-up, or total purchase payments (less any withdrawals).

4. Subsequent to the Existing Order, on December 13, 2002, Applicants filed a post-effective amendment to the registration statement for the version of Strategic Partners Annuity One currently offered by Pruco Life (File No. 333-37728) (the "Pruco Life SPAO Amendments"). That post-effective amendment is now effective. The Pruco Life SPAO Amendments made several changes to the Strategic Partners Annuity One Contract, including the addition of a new "Income Appreciator" benefit. Applicants have incorporated the Pruco Life SPAO Amendments filing by reference into the application for purposes of detailing the features of the Pruco Life Strategic Partners Annuity One Contract that will offer the 6% Credit. The Strategic Partners Annuity One Contract described in the Pruco Life SPAO Amendments is substantially similar in all material respects to the Strategic Partners Annuity One Contract that was described in the Existing Order, with these salient differences: (a) Addition of a new, Income Appreciator Benefit, (b) increased maximum issue age for the guaranteed minimum income benefit and the guaranteed minimum death benefit and the availability of each of these benefits individually, (c) expanded availability of the fixed rate option, (d) change in the date on which the guaranteed minimum death benefit value is "frozen", (e) availability of the earnings appreciator supplemental death benefit and the guaranteed minimum income benefit to older age owners, and (f) modification to the joint ownership and spousal continuance features. Applicants seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life SPAO Amendments (and under any future version of the Pruco Life Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life SPAO Amendments).

5. In addition, on December 10, 2002, Pruco Life of New Jersey filed a post-effective amendment to the version of Strategic Partners Annuity One that it currently sells (File No. 333-49230). That filing also has become effective. Applicants have incorporated that filing (the "Pruco Life of New Jersey SPAO Amendments") by reference into the application. The version of Strategic Partners Annuity One described in the

Pruco Life of New Jersey SPAO Amendments is substantially similar in all material respects to the version described in the Existing Order, except for these salient differences: (a) The newer version offers, for an additional charge, a banded bonus structure featuring credit amounts of either 3%, 4%, 5%, or 6%, (b) the newer version offers an enhanced guaranteed minimum death benefit at a higher charge, (c) the newer version modifies the joint ownership feature and adds a spousal continuance feature, and (d) the newer version reflects certain changes to the fixed options. Applicants also seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life of New Jersey SPAO Amendments (and under any future version of the Pruco Life of New Jersey Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life of New Jersey SPAO Amendments).

6. The prospectuses for the currently offered versions of the Strategic Partners Annuity One variable annuity offer the 6% Credit. However, the prospectuses also indicate that unless and until the Commission grants the relief requested in the application, the respective insurer will not recoup the amount of any 6% Credit granted within 12 months prior to death, and for a Contract that is returned during the free look period, will only recapture the value of the 6% Credit as of the business day on which the insurer receives the redemption request (less any charges attributable to that Credit).

7. The version of Strategic Partners Annuity One that offers a Credit (including the 6% Credit proposed in the application) has certain charges that differ from the counterpart contract not offering any Credit. The Contract with Credit has a different withdrawal charge schedule, under which the withdrawal charge is 8% of the amount withdrawn if no contract anniversary has elapsed since the purchase payment was made, 8% if only one contract anniversary has elapsed, 8% if only two contract anniversaries have elapsed, 8% if only three contract anniversaries have elapsed, 7% if only four contract anniversaries have elapsed, 6% if only five contract anniversaries have elapsed, and 5% if only six contract anniversaries have elapsed. The withdrawal charge no longer applies once seven or more contract anniversaries have elapsed since the date that the purchase payment was made. In contrast, the withdrawal charge applicable to the Contract not

<sup>1</sup> Investment Company Act Release Nos. 25660 (July 15, 2002) (notice) and 25695 (August 12, 2002) (order).