

("Holdings One"), National Grid (US) Investments ("US Investments"), all at 15 Marylebone Road, London, NW15JD, United Kingdom, National Grid (Ireland) 1 Limited ("Ireland 1"), and National Grid (Ireland) 2 Limited ("Ireland 2" and collectively, "Applicants"), both at 6 Avenue Pasteur L 2310, Luxembourg, all registered holding companies, have filed a post-effective amendment under section 5(d) of the Act to a previously filed application.

By order dated March 15, 2000, the Commission authorized Holdings One (formerly known as National Grid) to acquire all of the issued and outstanding common stock of the New England Electric System ("NEES"), a registered holding company. *See National Grid Group plc, et al*, Holding Co. Act Release No. 27154 (March 15, 2000) ("NEES Order"). Holdings One acquired NEES through several intermediate registered holding companies, including: U.S. Investments, Ireland 1, and Ireland 2. This corporate structure was designed to hold the National Grid's United States assets in a tax-efficient manner. To maintain tax efficiency, the Commission also authorized Holdings One to make non-material changes to its corporate structure.<sup>1</sup> *See NEES Order*.

By order dated January 16, 2002, the Commission authorized Holdings One and National Grid (formerly known as New National Grid Group plc) to acquire Niagara Mohawk Holdings, Inc. ("NiMo"). *See National Grid Group plc, et al*, Holding Co. Act Release No. 27490 (January 16, 2002) ("NiMo Order"). In the NiMo Order, the Commission also authorized Holdings One to become a direct subsidiary of National Grid and the direct parent of National Grid Holdings, Ltd., a foreign utility company ("FUCO") within the meaning of section 33 of the Act. In the application underlying the NiMo Order, it was represented that Holdings One would deregister, as proposed by the application, and claim FUCO status.

Prior to the acquisition of NiMo, under the authority granted by the NEES Order, Holdings One restructured its intermediate registered holding company subsidiaries. Specifically, U.S. Investments, Ireland 1, and Ireland 2 (collectively, "Former Intermediate Holding Companies") were removed as

intermediate holding companies.<sup>2</sup> They are now direct or indirect subsidiaries of National Grid Holdings Limited.<sup>3</sup>

Applicants state that, as a result of the transactions described above, Holdings One and the Former Intermediate Holding Companies no longer, directly or indirectly, own, control, or hold the power to vote ten percent or more of the outstanding voting securities of any public-utility company or holding company. Correspondingly, Applicants request that the Commission declare that Holdings One and the Former Intermediate Holding Companies are no longer public-utility holding companies.

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

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC -25991; File No. 812-12880]

### The Prudential Insurance Company of America, et al.; Notice of Application

April 4, 2003.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of certain offers of exchange, and for an order under section 6(c) of 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 to permit the recapture of certain bonus credits.

**SUMMARY OF APPLICATION:** Applicants seek an order approving the terms of a proposed offer of exchange of the "Discovery Plus", "Variable Investment Plan" and "Qualified Variable Investment Plan" individual variable annuity contracts (the "Old Contracts") for a version of the Strategic Partners Annuity One individual variable annuity (the "New Contracts") to be offered by Pruco Life Insurance

Company and Pruco Life Insurance Company of New Jersey. Applicants also seek an order approving the terms of a proposed exchange program under their Strategic Partners FlexElite variable annuity contract. In addition, Applicants seek an order to permit the recapture of any bonus credits granted with respect to purchase payments under the New Contracts (a) if the New Contract is cancelled during the applicable free-look period or (b) for credits granted within one year prior to death where the death benefit is equal to contract value.

**Applicants:** The Prudential Insurance Company of America ("Prudential Life"), the Prudential Individual Variable Contract Account and the Prudential Qualified Individual Variable Contract Account (each such Account, the "Old Prudential Account"); Pruco Life Insurance Company ("Pruco Life"); Pruco Life Flexible Premium Variable Annuity Account (the "New Pruco Life Account"); Pruco Life Insurance Company of New Jersey ("PLNJ," and collectively with Pruco Life and Prudential Life, the "Insurance Companies"); Pruco Life of New Jersey Flexible Premium Variable Annuity Account (the "New PLNJ Account," and collectively with the Old Pruco Life Accounts and the New Pruco Life Account, the "Accounts"); and Prudential Investment Management Services LLC ("PIMS," and collectively with the Insurance Companies and the Accounts, "Applicants").

**Filing Date:** The application was filed on September 9, 2002, and amended and restated on April 3, 2003.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 2003, 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 may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102.

<sup>1</sup> In the application underlying the NEES Order, it is stated that to maintain an efficient post-acquisition structure would require their quick response to changes in such areas as tax law and accounting rules and that it might be necessary to revise various organizational details of the intermediate registered holding companies.

<sup>2</sup> National Grid (US) Investments 4, National Grid U.S. Partner 1 Limited, National Grid U.S. Partner 2 Limited, and National Grid Holdings Inc. were added as new intermediate holding companies. National Grid (US) Holdings Limited and National Grid General Partnership were not changed in the restructuring, and remain intermediate registered holding companies.

<sup>3</sup> Specifically, U.S. Investments and Ireland 1 are direct subsidiaries of National Grid Holdings Limited; Ireland 2 is a direct subsidiary of Ireland 1.

**FOR FURTHER INFORMATION CONTACT:**

Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. (202) 942-8090).

**Applicants' Representations**

1. Prudential Life is a stock life insurance company founded in 1875 under the laws of New Jersey. It is licensed to sell life insurance and annuities in the District of Columbia, Guam, the U.S. Virgin Islands and in all states. Pruco Life is a stock life insurance company organized in 1971 under the laws of the State of Arizona and is licensed to sell life insurance and annuities in the District of Columbia, Guam, and in all states except New York. PLNJ is a stock life insurance company organized in 1982 under the Laws of the State of New Jersey and is licensed to sell life insurance and annuities in the states of New Jersey and New York. PLNJ is a wholly-owned subsidiary of Pruco Life, which is a wholly-owned subsidiary of Prudential Life. PIMS is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. PIMS is the principal underwriter for the Old Contracts and the New Contracts and for certain other of Prudential Life's variable insurance products, including the Strategic Partners FlexElite variable annuity. PIMS is an affiliate of Prudential Life.

2. Each Old Prudential Account was established on October 12, 1982, in accordance with authorization by the Board of Directors of Prudential Life and registered under the Act as a unit investment trust (File Nos. 811-03622 and 811-03625). The Prudential Individual Variable Contract Account is the separate account through which Prudential Life issues the Discovery Plus individual variable annuity contracts ("Discovery Plus Contracts") and the Variable Investment Plan Contracts. The Prudential Qualified Individual Variable Contract Account is the separate account through which Prudential Life issues the Qualified Variable Investment Plan Contracts (collectively with the Variable Investment Plan Contracts, the "VIP Contracts").

3. The New Pruco Life Account was established on June 16, 1995, in accordance with authorization by the Board of Directors of Pruco Life and registered under the Act as a unit investment trust (File No. 811-07325). It is the separate account in which Pruco Life will set aside and invest assets attributable to the New Contracts.

4. The New PLNJ Account was established on May 20, 1996, in accordance with authorization by the Board of Directors of PLNJ and registered under the Act as a unit investment trust (File No. 811-07975). It is the separate account in which PLNJ will set aside and invest assets attributable to PLNJ's version of the New Contracts.

*The Exchange Offer*

5. The Exchange Offer proposed by the Applicants will be made only to owners of the Old Contracts whose current account value equals or exceeds \$ 20,000, whose Old Contract is no longer subject to a withdrawal charge, and who are aged 80 or younger on the date of the exchange.

6. The New Contracts will be registered with the SEC and will be offered as individual tax-deferred flexible premium variable annuity contracts. They will permit contract values to be accumulated on a variable, fixed, or combination of variable and fixed basis. They require a minimum initial premium payment of \$20,000. Subsequent purchase payments generally must be at least \$500.

7. On the day the exchange is effected (the "Exchange Date") eligible owners would receive a bonus based on the contract value of each Old Contract surrendered in exchange for an enhanced New Contract (the "New Credit"). The New Credit would be equal to 1.5%, 2%, 2.5%, or 3%, depending on the amount exchanged and the age of the owner. Specifically, the New Credit percentage is 2% for purchase payments less than \$250,000, 2.5% for purchase payments of \$250,000 or more (but less than \$1 million), and 3% with respect to a purchase payment of \$1 million or more if the contract owner is age 80 or younger (for jointly-owned contracts, if the older owner is 80 or younger). The New Credit percentage is 1.5% for contract owners aged 81 or older (for jointly-owned contracts, if the older owner is 81 or older), regardless of the amount of the purchase payment. Under the New Contracts, the New Credit will vest upon the expiration of the free look period (except for New Credits applied within 12 months of death where the death benefit amount is equal to

contract value). Specifically, if a New Credit is applied to a purchase payment within one year of 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.

8. The New Contracts will provide for a base death benefit equal to the greater of (a) contract value or (b) total purchase payments (less withdrawals). The guaranteed minimum death benefit option ("GMDB") guarantees that the death benefit will be no lower than a certain "protected value" equal to the "step-up value" or the "roll-up value" or the greater of the "step-up value" or the "roll-up value". The step-up value equals the highest value of the contract on any contract anniversary date (on each contract anniversary, the new step-up value becomes the higher of the previous step-up value and the current contract value). Between anniversary dates, the step-up value is only increased by additional purchase payments and reduced proportionally by withdrawals. The roll-up value equals the total of all invested purchase payments compounded daily at an effective annual rate of 5.0%. The New Contract will offer a minimum of three annuity payment options, including annuity payments for a fixed period, life income annuity option, and an interest payment settlement option.

9. Contract values under the New Contracts may be invested in several different investment company portfolios ("Underlying Funds"). New Underlying Funds may be added in the future. All but one of the Underlying Funds are portfolios of The Prudential Series Fund ("Series Fund Portfolios"). The other Underlying Fund is a portfolio of Janus Aspen Series. In addition, contract values under the New Contracts may be allocated to certain companion fixed options and market value adjustment options.

10. Contract values may be transferred among the subaccounts funding the New Contracts without charge for the first twelve such transfers per contract year. After the twelfth, a charge of up to \$30 for each additional transfer will be imposed. New Contract owners may enroll in a dollar-cost averaging transfer program (the "DCA Program"). Contract owners who enroll under the DCA Program may then systematically transfer either a fixed dollar amount or a percentage out of any variable investment option and into any other variable investment option. The New Contracts also will offer an auto-rebalancing feature. The contract owner may choose an allocation among the

variable investment options, and on a periodic basis (monthly, quarterly, semi-annually, or annually) automatic transfers occur to return the contract to the chosen allocation. In addition to the DCA Program, the New Contract will offer a dollar cost averaging fixed rate option (the "DCA Fixed Rate Option"). Purchase payments allocated to the DCA Fixed Rate Option will be allocated to the insurer's general account, and will earn interest at prevailing rates. Those purchase payments will be transferred, in either six or twelve monthly installments, to the variable investment options selected by the contract owner.

11. Contract values under the New Contracts may be accessed at any time prior to the annuity commencement date by means of partial surrenders or full surrender. The New Contracts will permit withdrawal of up to 10% of purchase payments per contract year without charge. This annual withdrawal amount, which is not subject to the contingent deferred sales charge ("CDSC"), is also referred to herein as the "charge-free-amount". Earnings (the contract value in excess of purchase payments) are also not subject to the CDSC when withdrawn. No CDSC is imposed on amounts withdrawn to meet minimum distribution requirements. Purchase payments are deemed to be withdrawn before any earnings. The CDSC under the New Contracts will be as follows:

| Contract anniversaries since purchase payment | Withdrawal charge (percent) |
|-----------------------------------------------|-----------------------------|
| 0 .....                                       | 8                           |
| 1 .....                                       | 8                           |
| 2 .....                                       | 8                           |
| 3 .....                                       | 8                           |
| 4 .....                                       | 7                           |
| 5 .....                                       | 6                           |
| 6 .....                                       | 5                           |
| 7 or more .....                               | 0                           |

12. Some versions of the New Contracts may offer lower withdrawal charges. In no event, however, will the withdrawal charge after a given number of contract anniversaries exceed the charge shown in the above schedules.

13. Other charges under the New Contract will include the following: (a) Asset-based insurance and administrative charges of 1.20%, 1.45%, and 1.55% for the base death benefit, Roll-up or Step-up guaranteed minimum death benefit, and greater of Roll-up or Step-up guaranteed minimum death benefit, respectively; (b) where the guaranteed minimum income benefit feature ("GMIB") has been elected, a charge at an annual rate of 0.45% of the Roll-Up value, which is

deducted proportionally from the net assets of each sub-account on each contract anniversary and pro-rata upon partial withdrawals (when the remaining contract value is less than the amount of the charge), annuitization, the contract owner's election to discontinue the feature, and surrender of the contract; (c) where the Earnings Appreciator supplemental death benefit feature has been elected, a charge at an annual rate of 0.30% of the contract value which is deducted from the contract value on the contract anniversary and upon annuitization, death of the sole or last surviving owner prior to annuitization, surrender of the contract, and partial withdrawal if the contract value remaining is insufficient to cover the then applicable charge; (d) in those jurisdictions in which premium taxes are assessed, a charge to cover these taxes, either when the contract is issued or when annuity payments begin; and (e) for each transfer among subaccounts after the twelfth in a single contract year, a charge up to \$30 assessed pro rata from the subaccounts involved in the transfer; and (f) a charge equal to .25% of contract value for the optional Income Appreciator benefit that pays a benefit designed to help the owner defray the taxes that will be owed on annuity payments.

14. The Discovery Plus Contract is offered pursuant to a registration statement under the Securities Act of 1933 ("1933 Act") (File No. 33-25434), and permits contract values to be accumulated on a variable, fixed or combination variable and fixed basis. The Discovery Plus Contract requires a minimum initial premium payment of \$10,000, and each subsequent premium payment must be at least \$1000. Contract values of the Discovery Plus Contracts currently may be allocated to 13 subaccounts, each of which corresponds to a portfolio of the Prudential Series Fund, Inc. Contract values may also be accumulated on a guaranteed basis by allocation to Prudential Life's general account.

15. Contract values may be transferred among the Discovery Plus subaccounts without charge for the first four such transfers per contract year. The contract owner does not have a contractual right to more than four transfers a year, although Prudential Life currently permits such excess transfers. The Discovery Plus Contract offers a DCA Program similar to the one available under the New Contracts. Unlike the New Contracts, however, the Discovery Plus Contract's DCA Program permits transfers to come only out of the Money Market Portfolio.

16. The Discovery Plus Contract provides a bonus credit of 1% of each purchase payment during the first three contract years, up to a maximum credit of \$ 1,000 per contract year. Prudential Life has the contractual discretion to grant the 1% bonus for purchase payments made after the third contract year, and currently does so. The credit does not vest at all until the end of the surrender charge period, at which point the entire credit vests. Applicants represent that each owner of a Discovery Plus Contract to whom an Exchange Offer is extended will be fully vested in his/her bonus amounts. Any withdrawal or surrender during the surrender charge period results in the recapture of any credit corresponding to the amount withdrawn. Contract values under the Discovery Plus Contracts may be accessed at any time prior to the annuity commencement date by means of partial surrenders or full surrender. The Discovery Plus Contract permits a charge-free withdrawal of all earnings and up to 10% of the contract value each contract year less any prior withdrawals of purchase payments ("net premium payments").

17. The Discovery Plus Contract provides for a death benefit equal to the greater of (a) the contract value and (b) net premium payments. In addition, the death benefit is subject to a one-time step-up on the sixth contract anniversary, at which time the minimum death benefit is guaranteed to be the greater of (a) the contract value on the sixth contract anniversary, increased by any additional premium payments and reduced by any withdrawals, (b) the contract value, and (c) net premium payments. The Discovery Plus Contract offers the same annuity options available under the New Contracts.

18. The Discovery Plus Contracts assess a CDSC against partial or full surrenders in excess of the free withdrawal amount. The length of time from receipt of a premium payment to the time of surrender determines the percentage of the CDSC. During the first five contract years after each premium payment, a CDSC will be assessed against the surrender of premium payments. The CDSC is a percentage of the amount surrendered (not to exceed the aggregate amount of the premium payments made) and equals:

| Contract anniversaries since purchase payment | Withdrawal charge (percent) |
|-----------------------------------------------|-----------------------------|
| 0-2 .....                                     | 7                           |
| 3 .....                                       | 6                           |
| 4 .....                                       | 5                           |
| 5 .....                                       | 4                           |

| Contract anniversaries since purchase payment | Withdrawal charge (percent) |
|-----------------------------------------------|-----------------------------|
| 6 or more .....                               | 0                           |

Prudential Life deducts an M&E charge and an administration fee from contract value at an aggregate annual rate equal to 1.20% of amounts invested in the contract's variable investment options. A charge for administrative expenses relating to the maintenance of the Discovery Plus Contract is deducted annually on each contract anniversary and upon surrender from the contract value. This maintenance fee is \$30, and is waived on contracts with a \$10,000 contract value or greater on the contract anniversary or full surrender. Charges for the Underlying Funds of the Discovery Plus Contracts (as of December 31, 2002) ranged on an annual basis from 0.37% to 0.82% of average daily net assets.

19. The VIP Contracts are individual, flexible premium variable annuity contracts that allow the contract owner to allocate purchase payments to 13 portfolios of The Prudential Series Fund, Inc., to the Prudential Variable Contract Real Property Account and to a fixed interest-rate option. These contracts are registered under the 1933 Act on Form N-4 (File No. 2-80897). The Qualified Variable Investment Plan Contracts ("QVIP Contracts") are also registered under the 1933 Act on Form N-4 (File No. 2-81318) and generally have the same features as the VIP contracts, except that they are sold only to certain retirement arrangements. Except as indicated, the discussion herein concerning the VIP Contracts applies equally to the Qualified Variable Investment Plan Contracts, and references to the VIP contracts encompass both VIP and QVIP Contracts. The total expenses of the Prudential Series Fund portfolios available under the VIP contracts (as of December 31, 2002) ranged from 0.37% to 0.82% annually.

20. The VIP Contracts also offer a DCA Program, under which the contract owner can systematically transfer amounts from the money market sub-account into any other variable investment option. During the first three years of the contract, Prudential Life adds an additional 1% bonus to each purchase payment made by an owner. This 1% bonus vests over a period of eight contract anniversaries. Prudential Life has the contractual discretion to grant the 1% bonus for purchase payments made after the third contract year, and currently does so. Applicants represent that each owner of a VIP

Contract to whom an exchange offer is extended will be fully vested in his/her bonus amounts. The VIP Contract offers several annuity and settlement options, including life annuity with 10 years certain and an interest payment option. If the annuitant under a VIP Contract dies, the beneficiary will receive the total value of the contract, or, depending on the age of the annuitant, the total amount invested in the contract (reduced proportionately by withdrawals), whichever is greater.

21. Each day, Prudential Life deducts a mortality and expense risk charge under the VIP contracts equal, on an annual basis, to 1.20% of the daily value of the contract invested in the variable investment options. During the accumulation phase, Prudential Life deducts an annual contract fee of \$30 if the contract value is less than \$10,000 on the contract anniversary date. Each contract year, the contract owner can withdraw earnings, plus up to 10% of the owner's total contract value without paying a withdrawal charge. With respect to contracts issued in states that impose a premium tax, Prudential Life makes a deduction from the contract value to pay some or all of these taxes. There is a CDSC under the VIP Contracts according to the following schedule:

| Contract anniversaries since purchase payment | Withdrawal charge (percent) |
|-----------------------------------------------|-----------------------------|
| 0 .....                                       | 8                           |
| 1 .....                                       | 7                           |
| 2 .....                                       | 6                           |
| 3 .....                                       | 5                           |
| 4 .....                                       | 4                           |
| 5 .....                                       | 3                           |
| 6 .....                                       | 2                           |
| 7 .....                                       | 1                           |
| 8 .....                                       | 0                           |

22. Prudential proposes to offer eligible owners of Old Contracts the opportunity to exchange their Old Contracts for New Contracts by means of the Exchange Offer. To be eligible for the Exchange Offer, Old Contract owners must not be subject to a CDSC on their contract, have a minimum contract value of \$ 20,000, and not be older than 80 on the date of the exchange. Only Old Contracts held in IRAs and outside any tax-qualified arrangement will be eligible for the Exchange Offer. Pruco Life and PLNJ, as applicable will provide from their general accounts a Credit to each owner of an Old Contract who accepts the offer (equal to either 1.5%, 2%, 2.5%, or 3% as discussed above). The Exchange Offer will provide that, upon acceptance of the offer, a New Contract will be issued

with a contract value equal to the contract value of the Old Contract surrendered in the exchange, increased by the amount of the applicable Credit. Any such Credit will be recaptured if the New Contract is surrendered during the free look period or if the Credit was granted within 12 months prior to death and the death benefit amount is equal to the contract value.

23. After an initial notification of the Exchange Offer to Old Contract owners and contacts made by Prudential's registered representatives, the Exchange Offer will be made by providing eligible owners of Old Contracts who express an interest in learning the details of the offer a prospectus for the New Contracts, accompanied by a letter explaining the offer and a piece of sales literature that compares the applicable contracts. The offering letter will advise owners of an Old Contract that the Exchange Offer is specifically designed for those contract owners who intend to continue to hold their contracts as long-term investment vehicles. The letter will state that the offer is not intended for all contract owners, and that it is especially not appropriate for any contract owner who anticipated surrendering all or a significant part (*i.e.*, more than 10% of purchase payments on an annual basis) of his or her contract before seven years have elapsed. In this regard, the letter will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the Exchange Offer. In addition, the offering letter will explain how an owner of an Old Contract contemplating an exchange may want to decline the offer to avoid the applicable CDSC on the New Contract if more than the annual "free withdrawal amount" is surrendered. In this regard, the offering letter will state in clear plain English that 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 Credits granted.

24. The contract value of an Old Contract ("Exchange Value") together with the New Credit and any additional premium payments submitted with an internal Exchange Application Form for the New Contract will be applied to the New Contract as of the Exchange Date. Because only Old Contract owners who are no longer subject to a CDSC charge will be eligible for the Exchange Offer, no CDSC will be deducted upon the surrender of an Old Contract in connection with an exchange. If a contract owner surrenders his New Contract prior to the completion of the

CDSC period, Prudential will apply the applicable CDSC according to the seven-year schedule detailed above. If a contract owner exercises his or her right to cancel the New Contract, the New Credit will be returned to Prudential and the Old Contract will be reinstated with contract values that reflect the investment experience while the New Contract was held, or such other value as is required by state law. After expiration of the New Contract's right to cancel period, withdrawals will be governed by the terms of the New Contract for purposes of calculating any CDSC. The Exchange Date will be the issue date of the New Contract for

purposes of determining contract years and anniversaries after the Exchange Date.

25. To accept the Exchange Offer, an owner of an Old Contract must complete an Internal Exchange Application Form. Contract values will be allocated to the New Contract investment options selected by the owner. Contract values may subsequently be reallocated under the New Contract pursuant to contract owner instructions. Payments submitted with the Internal Exchange Application Form will be assumed to be payments under the New Contract as of the date of issue of the New Contract.

26. No adverse tax consequences generally will be incurred by those Old

Contract owners who accept the Exchange Offer. The exchanges will constitute tax-free exchanges pursuant to Section 1035 of the Internal Revenue Code (for nonqualified annuities) or tax-free transfers (in connection with Old Contracts held under IRAs). Prudential designed the terms of the Exchange Offer (particularly the New Credit) in response to similar offers currently being made by its competitors as a means to maintain the existing Old Contract business.

27. The following chart summarizes the salient features of the Old Contracts and the New Contracts.

| Features                                                                                       | New contract     | Discovery plus  | VIP        |
|------------------------------------------------------------------------------------------------|------------------|-----------------|------------|
| <b>A. Investment Options:</b>                                                                  |                  |                 |            |
| 1. Number of underlying funds .....                                                            | 27 .....         | 13 .....        | 13.        |
| 2. Fixed rate option (and MVA option) .....                                                    | Yes .....        | Yes .....       | Yes.       |
| 3. Dollar cost averaging fixed rate option .....                                               | Yes .....        | N/A .....       | N/A.       |
| 4. Dollar cost averaging feature .....                                                         | Yes .....        | Yes .....       | Yes.       |
| 5. Asset allocation program .....                                                              | Yes .....        | N/A .....       | N/A.       |
| 6. Auto-rebalancing .....                                                                      | Yes .....        | N/A .....       | N/A.       |
| 7. Number of Free Transfers .....                                                              | 12 .....         | 4 .....         | 4.         |
| <b>B. Death Benefit:</b>                                                                       |                  |                 |            |
| 1. Base death benefit (greater of total purchase payments less withdrawals or contract value). | Yes .....        | Yes .....       | Yes.       |
| 2. Step-up or roll-up GMDB .....                                                               | Yes .....        | N/A .....       | N/A.       |
| 3. Greater of Step-up or Roll-up GMDB .....                                                    | Yes .....        | N/A .....       | N/A.       |
| 4. Earnings Appreciator supplemental death benefit .....                                       | Yes .....        | N/A .....       | N/A.       |
| <b>C. Annuity Options:</b>                                                                     |                  |                 |            |
| 1. Annuity payments for a fixed period .....                                                   | Yes .....        | Yes .....       | Yes.       |
| 2. Life income annuity option. ....                                                            | Yes .....        | Yes .....       | Yes.       |
| 3. Interest payment option .....                                                               | Yes .....        | Yes .....       | Yes.       |
| 4. Other annuity options. ....                                                                 | Yes .....        | Yes .....       | Yes.       |
| 5. Automated withdrawals .....                                                                 | Yes .....        | Yes .....       | Yes.       |
| <b>D. Guaranteed Minimum Income Benefit .....</b>                                              | Yes .....        | N/A .....       | N/A.       |
| <b>E. Spousal Continuation Benefit .....</b>                                                   | Yes .....        | N/A .....       | N/A.       |
| <b>F. Credit Amount/Bonus .....</b>                                                            | Up to 3% .....   | 1% .....        | 1%.        |
| <b>G. Fees and Charges:</b>                                                                    |                  |                 |            |
| 1. Maximum transfer fee .....                                                                  | \$30.00 .....    | N/A .....       | N/A.       |
| 2. Contract maintenance charge .....                                                           | \$0.00 .....     | \$30.00 .....   | \$30.00.   |
| 3. Base Death Benefit; or .....                                                                | 1.20% .....      | 1.20% .....     | 1.20%.     |
| GMDB—Roll-up or Step-up; or .....                                                              | 1.45% .....      | N/A .....       | N/A.       |
| GMDB greater of Roll-up and Step-up .....                                                      | 1.55% .....      | N/A .....       | N/A.       |
| 4. Earnings appreciator charge .....                                                           | .30% .....       | N/A .....       | N/A.       |
| 5. Income Appreciator charge .....                                                             | .25% .....       | N/A .....       | N/A.       |
| 6. GMIB charge .....                                                                           | .45% .....       | N/A .....       | N/A.       |
| 7. Underlying fund charge range (after Expense reimbursement) .....                            | .37%–1.30% ..... | .37%–.82% ..... | .37%–.82%. |

28. Applicants submit that the Exchange Offer is meant to encourage existing Old Contract owners who might otherwise surrender their contracts in exchange for a competitor's product offering a similar bonus to remain with Prudential instead. If imposing the New Contract's CDSC on the New Contract is not permitted, Applicants believe some contract owners might exchange their New Contracts with the intent to take advantage of the New Credit and then surrender the New Contract without a CDSC. Without the CDSC, Prudential would have no assurance that a contract

owner who accepted the Exchange Offer would persist for long enough for the New Credit and any payments to registered representatives to be recouped through standard fees from the ongoing operation of the New Contracts. Old Contract owners will be informed in the offering letter that Prudential reserve the right to terminate the Exchange Offer at any time, and will be referred to a toll-free telephone number to call for information concerning the current status of the Exchange Offer.

#### *The FlexElite Exchange Program*

29. In addition to seeking an order under section 11(a) with respect to the Exchange Offer described above, PLIC, PLNJ, the New PLIC Account, the New PLNJ Account, and PIMS also seek Commission approval of an exchange offer to be made with respect to each of PLIC's and PLNJ's Strategic Partners FlexElite variable annuity contract (such exchange offer is referred to hereinafter as the "FlexElite Exchange Program"). PLIC currently offers a Strategic Partners FlexElite variable annuity contract through the New PLIC Account. (File

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

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

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

reasons, Applicants submit that the provisions for recapture of any Credits under the New Contracts does not violate section 2(a)(32) and 27 (i)(2)(A) of the Act.

16. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, their redeemable securities to accomplish the same purposes as contemplated by section 22(c). Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

17. Applicants state that Pruco Life's and PLNJ's recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than the one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) and rule 22c-1.

### Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer and the FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act and that their approval 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. Applicants further submit that their request for exemptions from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and rule 22c-1 thereunder meet the standards set out in section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8729 Filed 4-9-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25993; File No. 812-12913]

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

April 4, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

**APPLICANTS:** National Life Insurance Company ("NLIC"), National Variable Annuity Account II ("Annuity Account"), and National Variable Life Insurance Account ("Life Account").  
**FILED DATE:** The application was filed on December 19, 2002, and amended and restated on April 3, 2003.

**SUMMARY OF APPLICATION:** Applicants request an order to permit NLIC to substitute securities issued by two series of the Sentinel Variable Products Trust ("SVPT") to support variable annuity contracts or variable life insurance contracts (collectively, the "Contracts") issued by NLIC, for securities issued by two series of the Market Street Fund ("MSF"), and currently held by either the Annuity Account or the Life Account (each, an "Account," together, the "Accounts").

**HEARING OR NOTIFICATION OF HEARING:** An order granting the amended and restated 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 must be received by the Commission by 5:30 p.m. on April 29, 2003, 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 writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o D. Russell Morgan, Esq., Assistant General Counsel, National Life Insurance Company, National Life Drive, Montpelier, Vermont 05604. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2415.

### FOR FURTHER INFORMATION CONTACT:

Ellen J. Sazzman, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

### Applicants' Representations

1. MSF has eleven investment portfolios, two of which are the subject of this application (each, a Portfolio). SVPT currently has five investment portfolios, but is adding two more that are the subject of this application (each, a Fund).

2. NLIC was a mutual life insurance company originally chartered by the State of Vermont in 1848. It is now a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. All owners of NLIC contracts, including the Contracts, are voting members of National Life Holding Company. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. NLIC established the Annuity Account on November 1, 1996, and the Life Account on February 1, 1985, as segregated investment accounts under Vermont law. Under Vermont law, the assets of each Account attributable to the Contracts through which interests in that Account are issued are owned by NLIC but are held separately from all other assets of NLIC for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Account equal to the reserves and other liabilities with respect to such Account are not chargeable with liabilities arising out of any other business that NLIC may conduct. Income, gains and losses, realized or unrealized, from assets allocated to each Account are credited to or charged against that Account without regard to the other income, gains or losses of NLIC. Each Account is a "separate account" as