



State of Utah

DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

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December 14, 2000

Ms. Graceann McKeon
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498

Re: Demutualization of The Prudential Insurance Company of America
No-Action Letter
File # B00232479

Dear Ms. McKeon:

In response to your November 21, 2000 letter, the Utah Division of Securities ("Division") has reviewed your request for a no-action letter pursuant to the authority granted by § 61-1-25 (5) of the Utah Uniform Securities Act ("Act") and § R164-25-5 of the Utah Administrative Code ("UAC"). In your request, you describe the demutualization of The Prudential Insurance Company of America ("Prudential") as a conversion from a mutual life insurance company to a stock life insurance company. Your letter requests confirmation that the Associates and Call Center Personnel participating in the demutualization of Prudential need not be licensed as agents.

Based upon the facts presented in your request, the Division will not recommend any enforcement or administrative action should the transaction proceed as outlined in your request. To avoid unnecessary restatement or summarization of the facts set forth in your request, the Division's response is attached to a photocopy of your request.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division on enforcement or administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter relates only to the transaction described above and will have no value for future

Ms. Graceann McKeon

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similar transactions and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Respectfully,

A handwritten signature in cursive script that reads "Paula W. Faerber".

Paula W. Faerber
Staff Attorney

Enclosure

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MELBOURNE

November 21, 2000

Hon. S. Anthony Taggart,
Director of Securities,
Department of Commerce, Division of Securities,
160 East 300 South,
Salt Lake City, Utah 84111.

Re: Demutualization of The Prudential Insurance Company of America

Dear Sir:

We are counsel to The Prudential Insurance Company of America, a New Jersey-domiciled mutual life insurance company ("Prudential"), in connection with Prudential's proposed conversion from a mutual life insurance company to a stock life insurance company. This process is referred to as a "demutualization."

We are writing to request your confirmation that agent registration is not required of Prudential Associates (as defined below) or Call Center Personnel (as defined below) in your jurisdiction in connection with the distribution of Holding Company Stock (as defined below) to Eligible Policyholders (as defined below) if the demutualization occurs in the manner described in this letter. The Holding Company Stock to be distributed to Eligible Policyholders in the demutualization will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemption under Section 3(a)(10) thereof. In addition, the Holding Company Stock will be a covered security as defined in Section 18(b)(1) of the Securities Act since it will be listed on the New York Stock Exchange at the completion of the transaction.

Background

The demutualization will occur through a transaction in which Eligible Policyholders (as defined below) will receive shares of common stock of a newly-formed holding company, Prudential Financial, Inc. (the "Holding Company"), which will hold, through an intermediate holding company, all of Prudential's issued and outstanding

common stock upon effectiveness of the demutualization. Under Chapter 17C of Title 17 of the New Jersey Revised Statutes (N.J.S.A. 17:17C) (the "New Jersey Demutualization Statute"), the fairness of Prudential's plan of reorganization (the "Plan") must be approved in advance of the effective date of the Plan (the "Effective Date") by the Commissioner of Banking and Insurance of the State of New Jersey (the "Commissioner"). As required by the New Jersey Demutualization Statute, the Commissioner will hold a public hearing for the purposes of receiving comments on the Plan and on any other matter related to the demutualization (the "Hearing"). The Plan must also be approved by a vote of certain of Prudential's policyholders whose policies are in force on the date on which Prudential's Board of Directors formally adopts the Plan (the "Adoption Date"), which is presently expected to be on December 15, 2000.

In connection with the demutualization, the Holding Company will apply for a listing of its common stock ("Holding Company Stock") on The New York Stock Exchange and will register its stock under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Plan also contemplates that the Holding Company will conduct a registered, underwritten initial public offering of Holding Company Stock (the "Initial Public Offering"), which is currently intended to occur in October 2001 and which will be consummated concurrently with the demutualization on the Effective Date.

The Plan provides that owners ("policyholders") of specified individual and group insurance policies, individual and group annuities, certificates or other evidences of interest in group insurance policies or annuities, funding agreements, guaranteed investment contracts and supplementary contracts in force with Prudential, or "deemed" to be in force with Prudential pursuant to the Plan, on the Adoption Date (collectively "policies", and policyholders of such "policies" constituting the "Eligible Policyholders"), will receive shares of Holding Company Stock, cash or policy credits in exchange for the extinguishment of their Membership Interests (as defined below). Pursuant to the Plan, the policies "deemed" to be in force with Prudential pursuant to the Plan consist of policies issued (i) in the United States by Pruco Life Insurance Company, Pruco Life Insurance Company of New Jersey and Prudential Select Life Insurance Company of America, each of which is a direct or indirect wholly-owned subsidiary of Prudential, (ii) jointly by National Life Assurance Company of Canada and Prudential, (iii) by Prudential's Canadian branch and subsequently transferred to London Life Insurance Company, including certain policies issued in replacement thereof by London Life or its parent Great-West Life Assurance Company, (iv) by Aetna, Inc. or its subsidiaries (each, an "Aetna Company") in replacement of policies originally issued by Prudential and transferred to an Aetna Company if issued by an Aetna Company following a notice by Prudential or an Aetna Company of non-renewal or cancellation,

and (v) certificateholders in specified group policies or contracts. In addition, the Plan offers life insurance policyholders who (i) filed a claim in the ongoing alternative dispute resolution process established pursuant to the settlement of Prudential's principal life insurance sales practice litigation ("ADR Claimants") and (ii) either (x) have chosen to rescind their policies in that process or (y) had an opportunity to acquire coverage they previously had as part of an ADR form of relief but who did not choose to acquire such coverage, the opportunity to repurchase their policies prior to the Effective Date and participate in the demutualization by "deeming" policyholders who so repurchase to be Eligible Policyholders as of the Adoption Date. Other than repurchasing ADR Claimants, only holders of policies that were in force on the Adoption Date will be Eligible Policyholders.

The Plan defines "Membership Interest" as the rights and interests of a policyholder (including without limitation any Eligible Policyholder) as a member of Prudential arising under Prudential's charter and by-laws or by law or otherwise, including under the Plan, which rights and interests include, but are not limited to, the right, if any, to vote and any right with regard to the surplus of Prudential not apportioned or declared by Prudential's Board of Directors for policyholder dividends.

Under the New Jersey Demutualization Statute, policyholders must approve the Plan at a meeting of policyholders that is called for that purpose and held after the Hearing (the "Policyholders' Meeting") by a vote of at least two-thirds of the votes of the "qualified voters" voting thereon. Pursuant to the Plan, generally only holders of policies (i) that have been issued or assumed by Prudential and not transferred to another insurer and (ii) that are in effect and have been in force for one year on the record date for the Plan are "qualified voters" entitled to vote on the Plan.

The New Jersey Demutualization Statute requires that Prudential provide notice of the Hearing to policyholders at least 45 days prior to the Hearing and that Prudential provide policyholders that are "qualified voters" notice of their opportunity to vote on the Plan not less than 45 days prior to the Policyholders' Meeting. As expressly permitted by the New Jersey Demutualization Statute, Prudential intends to combine the required notices to policyholders of the Hearing and to "qualified voters" of the Policyholders' Meeting in one document, the Policyholder Information Booklet. In addition to the notices of the Hearing and Policyholders' Meeting, the Policyholder Information Booklet will include a description of the Plan and the demutualization, the recommendation of Prudential's Board of Directors that voting policyholders approve the plan and disclosure regarding the Holding Company and Prudential and its subsidiaries that is similar to the disclosure included in the Form S-1 registration statement that will be filed with the Securities and Exchange Commission in connection with the Initial

Public Offering. Prudential will mail the Policyholder Information Booklet together with reply cards (a voting card, a stock election card and, where applicable, a taxpayer certification card), a letter from its Board of Directors and a voting guide that contains a brief overview of the Plan and explanations of the reply cards to each Eligible Policyholder and “qualified voter”. Where Prudential does not have a policyholder’s valid address, Prudential will mail a notice of adoption of the Plan to the policyholder’s last known address that will specify how the policyholder can obtain the Demutualization Materials (as defined below). For Eligible Policyholders that own group policies, Prudential will also provide a document that summarizes various fiduciary responsibilities and tax implications applicable to such policyholders. In addition, following a policyholder vote approving the Plan, ADR Claimants will receive a letter requesting that they indicate their interest in changing the remedy previously issued them and reinstating their policies, and those who respond positively will receive follow-up materials as to the specific procedures applicable to them. The Policyholder Information Booklet and the other materials to be distributed to policyholders or ADR Claimants are collectively referred to herein as the “Demutualization Materials”.

Prudential and its subsidiaries offer a full range of insurance, asset management, securities and other financial products and services and have more than 15 million individual and institutional customers in the United States and over 30 foreign countries. Prudential and its subsidiaries have a number of distribution forces for the products, the holders of which are entitled to participate in the demutualization. Prudential’s individual insurance and annuity products are distributed in the United States primarily through two retail distribution forces -- insurance agents and financial advisors. There are approximately 7,800 insurance agents who are agents of Prudential and certain of its subsidiaries. Virtually all of the insurance agents are registered with the National Association of Securities Dealers, Inc. (the “NASD”) as registered representatives of PRUCO Securities Corporation, a broker-dealer registered under Section 15(b) of the Exchange Act that is a subsidiary of Prudential. Substantially all of these agents are registered to sell only variable insurance products and mutual fund securities, but some are licensed to sell all types of securities. There are approximately 6,100 financial advisors in the United States who are employees and registered representatives of Prudential Securities Incorporated, which is also a registered broker-dealer that is a subsidiary of Prudential. In addition to providing securities brokerage and financial advisory services, certain of the financial advisors distribute insurance products, annuities and other products entitled to participate in the demutualization. The financial advisors generally are licensed to sell all types of securities and some are also licensed to sell insurance. Group insurance and annuity products, funding agreements and guaranteed investment contracts are distributed through institutional sales representatives that are employees of Prudential or its subsidiaries as well as through a number of the

aforementioned insurance agents and financial advisors. Most of Prudential's institutional sales representatives are also registered representatives of either PRUCO Securities Corporation or Prudential Investment Management Services LLC, another broker-dealer registered under Section 15(b) of the Exchange Act, and are licensed to sell variable insurance products and mutual fund securities. Certain products entitled to participate in the demutualization are sold through various independent channels such as independent brokers and agents and consultants that generally market products on behalf of a number of companies. Prudential is not registered as a broker-dealer under the Exchange Act.

The foregoing insurance agents, financial advisors, institutional sales representatives and other licensed distributors of the products entitled to participate in the demutualization, together with the officers, directors and other employees of Prudential and its subsidiaries, are collectively referred to herein as the "Associates". The Associates who distribute these products, together with the Associates who act as home office customer service representatives, serve as Prudential's principal means of communication with those entitled to participate in the demutualization.

As the principal means of communications with policyholders entitled to participate in the demutualization, Prudential expects that some Associates will, on their own initiative or in response to policyholders, communicate with policyholders about the demutualization and the Plan. In this regard, Prudential expects that some Associates will (i) contact policyholders to ensure that they have received the Demutualization Materials, (ii) answer any questions policyholders may have in connection with the Demutualization Materials, Plan, the Hearing, the Policyholders' Meeting or how to vote, (iii) discuss with policyholders the demutualization and/or (iv) recommend to policyholders that they vote to approve the Plan. In addition, Prudential is permitting Associates to give advice as to how policyholders should vote on the Plan, but Prudential is not instructing Associates to advise policyholders to vote in favor of the Plan. The Associates will not receive additional compensation, directly or indirectly, for their efforts in connection with such activities.

In addition, because of the extraordinary number of policyholders and the expected volume of questions therefrom relating to the demutualization, Prudential has arranged for the institution that will act as the transfer agent for Holding Company Stock (the "Transfer Agent"), to provide and staff a demutualization information "call center" (the "Demutualization Call Center"). The Transfer Agent will be EquiServe Trust Company, N.A., a "bank" as defined in Section 3(a)(6) of the Exchange Act. The Demutualization Materials will contain prominent references to toll-free telephone numbers that policyholders will be encouraged to call if they have questions about such

material or how to complete their reply cards. Prudential has contracted with the Transfer Agent to provide up to 600 representatives (the "Call Center Personnel") to respond to these and other calls about the demutualization that are routed to the Transfer Agent's facility. The Call Center Personnel will make no unsolicited calls to policyholders.

Call Center Personnel will be instructed to (i) answer any questions policyholders may have in connection with the Demutualization Materials, the Plan, the Hearing, the Policyholders' Meeting or how to vote, (ii) discuss with policyholders the demutualization, (iii) report to policyholders that the Policyholder Information Booklet contains the recommendation by Prudential's Board of Directors that policyholders vote to approve the Plan, and (iv) discuss the reasons the Board of Directors recommends approval of the Plan that are set forth in the Policyholder Information Booklet. Call Center Personnel will be instructed to transfer or refer (a) questions relating to the demutualization that they cannot answer to designated Prudential Associates and (b) questions relating to matters unrelated to the demutualization to regular Prudential call centers.

In discussions with policyholders concerning the Plan, the Associates and Call Center Personnel will be specifically instructed in writing and through other procedures to be implemented by Prudential to refrain from:

- (i) using written materials other than the Demutualization Materials or other documents prepared by Prudential for use in connection with the demutualization (such as scripts and other written materials prepared by Prudential);
- (ii) making any revisions to the documents referred to in (i) above;
- (iii) making any statements not derived from the Demutualization Materials or the other abovementioned documents;
- (iv) discussing the potential market value of Holding Company Stock or advising policyholders on whether or not to express a preference for Holding Company Stock rather than cash pursuant to the Plan;
- (v) discussing with policyholders their personal plans to invest or not invest in Holding Company Stock; or

(vi) recommending that policyholders participate in post-demutualization programs providing policyholders the ability to sell or purchase Holding Company Stock.

Prudential will communicate these restrictions to the Associates other than independent distributors through official bulletins from Prudential's senior management, to Associates which are independent distributors through advisory communications and to Call Center Personnel through arrangements with the Transfer Agent. In addition, Prudential will designate persons to assist Associates with inquiries related to the demutualization, and provide special training to such persons about issues related to the demutualization, including adherence to the above restrictions.

During the period prior to the demutualization, including during the period when "qualified voters" will be asked to vote on the Plan, the Associates will go about their normal activities, subject to the restrictions set forth above. Prudential anticipates that such activities may well include general discussion of the effects that the demutualization may have on Prudential.

Discussion

We believe that registration of the Associates and Call Center Personnel as agents is not required in your jurisdiction with respect to the foregoing activities since the demutualization is similar to, and within the intent of, the transactions referred to in Sec. 61-1-13.(22)(d)(vi) of the Utah Uniform Securities Act (the "Act"). This section contains the definition of "offer" and "sale" which expressly excludes "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash" and, thereby, should eliminate the need for agent registration in connection therewith. In addition, the Call Center Personnel are associated with a bank and therefore are not required to register as agents.

The insurance industry, and the demutualization process in particular, are highly regulated under New Jersey's insurance laws. Eligible Policyholders have the opportunity to appear at a public hearing held by the Commissioner regarding the Plan, and qualified voting policyholders have the right to vote on the Plan at the Policyholders' Meeting. The Commissioner must approve the Plan (which is thereafter subject to potential judicial review).

Prudential will become an indirect wholly-owned subsidiary of the Holding Company, which we believe is in some respects similar to a merger or consolidation of two entities or the acquisition of Prudential in consideration of the issuance of Holding Company Stock within the intent of the above-referenced section. The demutualization is similar to, and within the intent of Sec. 61-1-14.(2)(p) regarding mergers which provides a transactional exemption and corresponding issuer's agent exemption.

We believe that communications by the Associates and Call Center Personnel with policyholders pursuant to the foregoing guidelines, including recommending or discussing voting in favor of the Plan, should not be considered as "effecting or attempting to effect purchases or sales of securities within the meaning of the definition of "agent" contained in Sec. 61-1-13.(2) of the Act. The primary function of the Associates and Call Center Personnel will be to help Eligible Policyholders, both voting and non-voting, understand the Plan and the consequences of the demutualization. The Associates will not receive additional compensation, directly or indirectly, for their activities related to the vote on the Plan. While the Transfer Agent has been contracted specifically to provide and Staff the Demutualization Call Center, the fee for this activity will not be determined or affected by the outcome of the vote on the Plan or elections made by Eligible Policyholders. None of the Associates or Call Center Personnel will be in a position to handle customer funds or securities in connection with the vote and the demutualization. The demutualization informational activities of the Associates and all of the activities of the Call Center Personnel will be limited and supervised. While discussing the Plan with policyholders, the Associates and Call Center Personnel will be instructed not to discuss the potential market value of Holding Company Stock or advise policyholders on whether to express a preference for Holding Company Stock rather than cash. The Associates and Call Center Personnel will be directed to limit any discussion about the demutualization to statements that can be found in, or derived from, the Demutualization Materials. Moreover, the Call Center Personnel will only respond to incoming calls from policyholders and will make no unsolicited contact with policyholders. In effect, the Associates and Call Center Personnel will be mere conduits between Prudential and policyholders of public information about the Plan and the demutualization in connection with a corporate reorganization, and should not be considered as effecting or attempting to effect any transaction in securities for purposes of the agent registration requirements.

Most importantly, none of the Associates or Call Center Personnel will be engaged in the business of soliciting securities transactions by virtue of communicating with policyholders, including recommending that voting policyholders approve the Plan. Prudential's conversion from a mutual company to a stock company and the activities of the Associates and Call Center Personnel in connection therewith are, by their nature,

one-time, extraordinary events. Moreover, the Associates have not been hired for the purpose of recommending that policyholders vote in favor of the Plan, but generally have other substantial, full-time duties unrelated to the demutualization.

Based on the foregoing, we request your confirmation, or your no-action position to the effect, that agent registration is not required of Associates or Call Center Personnel in your jurisdiction in connection with the distribution of Holding Company Stock to Eligible Policyholders if the demutualization occurs in the manner described above.

Kindly acknowledge receipt of this letter by stamping the enclosed copy of this letter with your usual form of receipt acknowledgment and returning it in the enclosed postage-paid envelope. We respectfully request that you provide us your response within 30 days of your receipt of this letter.

Please call me at (212) 558-3893 if you have any questions. After December 31, 2000, please contact Della Richardson at (212) 558-4000. I look forward to hearing from you at your earliest convenience. Thank you for your cooperation.

Very truly yours,



Graceann McKeon

(Enclosures)