zero and therefore never increase from one excess premium payment to the next.

24. Moreover, Applicants concede that the Companies could avoid the potential ''stair-step'' issue simply by imposing the higher sales charges equally on premium payments in any Policy year, subject to the overall sales charge limits under the 1940 Act; Applicants argue, however, that Policy owners benefit from the lower sales charge imposed in connection with ''excess'' premium payments under the sales charge structure of the Policy.

Exemption From Section 27(e) of the 1940 Act and Rule 27e–1 Thereunder, and From Rule 6e–3(T)(b)(13)(vii)

25. Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27e–1 establishes the requirements for the notice mandated by Section 27(e) and prescribes from N–27E–1 for that purpose. Rule 6e–3(T)(b)(13) in essence modifies the requirements of Section 27 of the 1940 Act and the rules thereunder. Rule 6e–3(T)(b)(13)(vii) adopts Form N–27I–1 and requires it to be sent to a Policy owner upon issuance of the Policy and again during any lapse period in the first two Policy years. The Form requires statements of: (a) the Policy owner's right to receive back the excess sales load for a surrender during the first two Policy years, (b) the date that the right expires, and (c) the circumstances in which the right may not apply upon lapse. Thus Section 27(e) of the 1940 Act, and Rules 27e–1 and 6e–3(T)(b)(13)(vii) thereunder, require a notice of right of withdrawal, and refund on Form N–27I–1 to be provided to owners of the Policies entitled to a refund of sales load in excess of the limits stated in paragraph (b)(13)(v)(A) of Rule 6e–3(T).

26. The Policies have a sales charge and a CDSC that does not, during the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase), exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T) beyond which sales charges are characterized as ''excess sales charge'' is ever paid by an owner surrendering, withdrawing, reducing his or her specified amount, or lapsing in the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase).

27. Applicants represent that the sales charge and the CDSC on premium payments (and with respect to the CDSC applicable to an increase in specified amount, after the first twenty-four months following that increase) may exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T). Therefore, Applicants are requesting the relief sought in this application.

28. Rule 27e–1, pursuant to which Form N–27I–1 was first prescribed, specifies in paragraph (e) that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales charges. Applicants stat that Rules 27e–1 and 6e–2 (from which Rule 6e–3(T) was derived) were adopted in the context of front-end loaded products only and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales charges.

29. Applicants assert that requiring delivery of a Form N–27I–1 could confuse Policy owners at best, and, at worst, encourage them to surrender during the first two Policy years (or surrender or decrease to specified amount of their Policies during the first twenty-four Policy months following a specified amount increase) when it may not be in their best interests to do so. Applicants submit that an owner of a Policy with a declining CDSC, unlike a policy with a front-end sales charge, does not foreclose his or her opportunity, at the end of the first two Policy years (or twenty-four Policy months following a specified amount increase), to receive a refund of most monies spent. Not only has such an owner not paid any excess sales charges, but because the deferred charge declines over the life of the policy, the owner may never have to pay the deferred charge. Applicants thus assert that encouraging a surrender during the first two Policy years could, in the end, cost such an owner more in total sales charges (relative to total premium payments) than he or she would otherwise pay if the Policy, which is designed as a long-term investment vehicle, were held for the period originally intended.

30. Applicants submit that the absence of ''excess sales charges,'' and, therefore, the absence of an obligation to assure repayment of that amount, do not create a right in an owner which Form N–27I–1 was designed to highlight. In the absence of this right, Applicant's argue that the notification contemplated by Form N–27I–1 is an unnecessary and counter-productive administrative burden the cost of which appears unjustified, and any other purpose potentially served by the Form N–27I–1 would already be addressed by the required Form N–27I–2 Notice of Withdrawal Right, generally describing the charges associated with the Policy, and prospectus disclosure detailing the sales charge design. Applicant's submit that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1, could have contemplated the applicability of Form N–27I–1 in the context of an insurance policy with a declining contingent deferred sales charge.

Conclusion

For the reasons summarized above, the Applicants represent that the requested relief from Sections 27(a)(3), 27(c)(2), and 27(e) of the 1940 Act, paragraphs (b)(13)(ii), (b)(13)(vii), and (c)(4)(v) of Rule 6e–3(T) thereunder, and 27e–1 thereunder, is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19373 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22096; No. 812–9996]

Keyport Life Insurance Company, et al.

July 25, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Keyport Life Insurance Company (''Keyport''), KMA Variable Account (''KMA Account''), Variable Account A (''Account A''), Independence Life and Annuity Company (''Independence life''), Independence Variable Annuity Separate Account (''VA Account''), Liberty Life Assurance Company of Boston (''Liberty Life,'' together with Keyport and Independence Life, the ''Insurance Companies''), Variable Account K (''Account K,'' together with KMA Account, Account A and VA Account, the ''Separate Accounts''), and Keyport Financial Services Corporation (''KFSC'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges

from the assets of: (a) the Separate Accounts in connection with the offering of certain flexible premium variable annuity contracts (''Existing Contracts''); and (b) any other separate account (''Future Accounts'') established by Applicants in connection with the offering of variable annuity contracts (''Future Contracts,'' together with Existing Contracts, ''Contracts'') which are substantially similar in all material respects to the Existing Contracts. Exemptive relief also is requested to the extent necessary to permit the offer and sale of Contracts for which certain broker-dealers other than KFSC (''Future Underwriters'') serve as the principal underwriter.

FILING DATE: The application was filed on February 16, 1996, and amended on July 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the 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 August 20, 1996, and must 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 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Bernard R. Beckerlegge, Esq., General Counsel, Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commisison.

Applicants' Representations

1. Keyport is a stock life insurance company authorized to do business in the Virgin Islands, the District of Columbia and all states except New York. Keyport is an indirect subsidiary of Liberty Mutual Insurance Company (''Liberty Mutual'').

2. Independence Life, a Rhode Island corporation and subsidiary of Keyport, is authorized to do business in the District of Columbia and all states except New York.

3. Liberty Life is a stock life insurance company incorporated in Massachusetts and licensed to do business in all states and in the District of Columbia. Liberty Life is a subsidiary of Liberty Mutual and Liberty Mutual Fire Insurance Company.

4. Keyport established KMA Account and Account A pursuant to the laws of Rhode Island on January 9, 1980, and January 30, 1996, respectively. Independence Life established VA Account pursuant to the laws of Michigan on June 26, 1987. Liberty Life established Account K pursuant to the laws of Massachusetts on September 13, 1989, Each of the Separate Accounts is divided into sub-accounts (''Sub -Accounts'') that correspond to portfolios of certain registered investment companies (''Existing Funds''). The Separate Accounts now or in the future may serve as funding media for the Contracts.

5. Future Accounts will be registered pursuant to the 1940 Act as either open-end management investment companies or unit investment trusts. Separate Accounts and Future Accounts may invest in Existing Funds and in other management investment companies (''Other Funds''). Future Accounts organized as open-end management investment companies also may invest directly in portfolio securities.

6. KFSC, the principal underwriter of the Contracts, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (''NASD''). Keyport is the corporate parent of KFSC.

7. Future Underwriters will be members of the NASD, and will control, be controlled by, or be under common control with any of Keyport, Independence Life or Liberty Life.

8. The Existing Contracts are group flexible purchase payment variable annuities. Certificates will be issued to individuals under group contracts. The Contracts also may be offered as individual contracts. The Contracts will be offered through various distribution channels, including banks and affiliated and unaffiliated broker-dealers (''Channels''). The Contracts will accommodate varying design requests of the Channels by offering choices of various fees, charges and certain contract features (including death benefits, funding media, withdrawal rights, transfer privileges, annuity options, dollar cost averaging, systematic withdrawals and account rebalancing).

9. The Existing Contracts will be offered with a variety of investment options, including Steinroe Trust, Keyport Trust and Manning & Napier Insurance Fund, each of which is registered pursuant to the 1940 Act as an open-end management investment company.

10. Three alternative death benefits will be offered, all or only certain of which may be available under a particular Contract. At the time of issuance of a Contract, the death benefit is the initial purchase payment; thereafter, the death benefit is as follows:

a. Death Benefit 1 is the prior death benefit plus any additional purchase payments, less any partial withdrawals, including the amount of any applicable surrender charge.

b. Death Benefit 2 at issue is the initial purchase payment. Thereafter, the death benefit is calculated for each valuation period by adding any additional purchase payments, and deducting any partial withdrawals. The certificate value for each certificate anniversary (the ''Anniversary Value'') is determined. Each Anniversary Value is increased by any purchase payments made after that anniversary. This resultant value is then decreased by an amount calculated at the time of any partial withdrawal made after that anniversary. The amount is calculated by taking the amount of any partial withdrawal, and dividing by the certificate value immediately preceding the partial withdrawal, and then multiplying by the Anniversary Value immediately preceding the withdrawal. The greatest Anniversary Value, as so adjusted, (the ''greatest Anniversary Value'') is the death benefit unless the sum of net purchase payments is higher. The sum of net purchase payments will be the death benefit if such amount is higher than the greatest Anniversary Value.

c. Death Benefit 3 is calculated for each valuation period by applying a death benefit interest rate to the previously calculated death benefit, adding any purchase payments made during the current valuation period, and deducting any partial withdrawals (including any applicable surrender charge) taken during the current valuation period. The death benefit interest rate is applied to each separate purchase payment until it equals the maximum guaranteed death benefit. Initially, the maximum guaranteed death benefit is equal to a multiple of two times the initial and each additional purchase payment made. Thereafter, the maximum guaranteed death benefit at of the effective date of a partial withdrawal

is reduced first by the amount of the withdrawal representing appreciation and second in proportion to the reduction in certificate value for any partial withdrawal representing purchase payments.

11. Partial withdrawals may be permitted during the accumulation period without imposition of a surrender charge, as follows:

a. In any certificate year, Contract owners may withdraw an aggregate amount not to exceed, at the time of the withdrawal: (i) the certificate value, less (ii) the portion of the purchase payments not previously withdrawn.

b. In any certificate year after the first, Contract owners may withdraw the positive difference, if any, between the amount withdrawn pursuant to ''a'' above, in any such subsequent year and a specified percentage (currently 10 percent) of the certificate value as of the preceding certificate anniversary.

Surrender charges will be deducted with respect to withdrawals in excess of these amounts. The Contracts will provide varying free withdrawal amounts, minimum withdrawal amounts and minimum required remaining certificate values.

12. Applicants contemplate offering the Contracts with the following payment options: (a) income for a fixed number of years; (b) life income with 10 years of payments guaranteed; and (c) joint and last survivor income. Each option is available in two forms—as a variable annuity for use with the Separate Accounts and Future Accounts and as a fixed annuity for use with the general accounts of the Insurance Companies. Applicants do not currently anticipate offering any additional variable annuity options, but may offer additional fixed annuity options. Other fixed annuity options may be arranged by mutual consent.

13. The Contracts will specify minimum amounts to be transferred and minimum required remaining values in the Sub-Account from which the transfer is made, the number of transfers that can be made during the accumulation period and annuity period and the limitations on transfers from the fixed account. The Contracts will reserve the right to impose a charge for transfers exceeding a specified number.

14. The Contracts may offer dollar cost averaging, Sub-Account rebalancing and programs of systematic monthly transfer between Sub-Accounts and withdrawals.

15. The Contracts will provide for variations in sales load structures, including an asset-based charge, a contingent deferred sales charge (''CDSC''), or both. Applicants state that sales loads in the aggregate will not exceed 9 percent of purchase payments.

16. Charges for mortality and expense risks will range from a minimum charge of 0.35 percent to a maximum charge of 1.25 percent per annum. Variations in the mortality and expense risk charge from the minimum charge will be based on additional mortality and expense risks experienced by Applicants as a result of the particular Contract design features. The mortality and expense risk charge may be a source of profit for Applicants and the excess may be used for, among other things, the payment of distribution expenses.

17. The mortality and expense risk charge is imposed to compensate Applicants for bearing certain mortality and expense risks under the Contracts. Applicants assert that the mortality and expense risk charge is a reasonable charge to compensate Applicants for the risks that: (a) annuitants will live longer than was anticipated when the annuity rates guaranteed in the Contracts were set; (b) the death benefit will be greater than the Contract value; and (c) administrative expenses will exceed the charges guaranteed for the Contracts.

18. Other charges will be deducted in any appropriate manner permitted and subject to the conditions and requirements of applicable rules under the 1940 Act including, but not limited to, any ''at-cost'' standards. Applicants represent that the administrative charges will represent compensation for the administrative costs, without profit, expected to be incurred over the duration of the Contracts.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements that prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Section 6(c) of the 1940 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 1940 Act and the rules 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 1940 Act.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit them to assess charges for mortality and expense risks ranging from a minimum of 0.35 percent to a maximum of 1.25 percent per annum from the assets of the Separate Accounts under the Contracts and Future Accounts under Future Contracts. Applicants also seek exemptive relief for Future Underwriters to serve as principal underwriters of the Contracts.

4. Applicants submit that the relief requested with respect to the Contracts meets the standards set forth in Section 6(c) of the 1940 Act and is consistent with existing precedent. Applicants assert that, without the requested relief, they would be required to request and obtain exemptive relief in the future in connection with the Contracts. Applicants represent that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in their current application.

5. Applicants state that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity market by eliminating the need for each Applicant and its affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. Applicants assert that investors would not receive any benefit or additional protection by requiring Applicants repeatedly to seek exemptive relief with respect to the same issues addressed in this application. Applicants assert that the delay and expense involved would impair the ability of Applicants to take effective advantage of business opportunities as they arise and would disadvantage investors as a result of the increased expenses of Applicants.

6. Applicants submit that the exemptive relief requested with respect to the offering of the Contracts through Future Underwriters is consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants assert that, without the requested relief, they would be required to request and obtain exemptive relief in connection with Future Underwriters. Applicants represent that such requests for exemptive relief would present no issues under the 1940 Act that are not addressed in their current application.

7. Applicants submit that the mortality and expense risk charges are

reasonable and proper insurance charges imposed to compensate Applicants for bearing certain mortality and expense risks under the Contracts.

Applicants' Conditions

1. Applicants represent that the mortality and expense risk charges will range from a minimum of 0.35 percent to a maximum of 1.25 percent, that each form of the Contracts will include a mortality and expense risk charge that is within the range of industry practice for comparable variable annuity contracts, and the differentials between mortality and expense risk charges for different forms of the Contracts are reasonable in relation to the differentials in mortality or expense risks assumed. Applicants undertake not to offer any form of the Contracts without first making the required analysis and determinations that the mortality and expense risk charge is within the range of industry practice and that the differentials between mortality and expense risk charges for different forms of the Contracts are reasonable in relation to the differentials in mortality or expense risks assumed. Applicants state that these determinations will be made with respect to all forms of the Contracts, based on analysis by Applicants of publicly available information about similar industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Each Applicant undertakes to maintain at its principal office, available to the Commission upon request, a memorandum setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis, in making the foregoing determinations.

2. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Applicants state that, notwithstanding the foregoing, Applicants will not commence offering a form of the Contracts until the relevant Applicant has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account of the Applicant and the affected Contract owners. Each Applicant represents that is will maintain at its principal office, and make available to the Commission, upon request, a memorandum setting forth the basis for such conclusion.

3. Each form of the Contracts will be offered by a separate prospectus and statement of additional information that will be filed pursuant to either Rule 497 or Rule 485 under the Securities Act of 1933. Applicants undertake to include in the letter transmitting each such filing representations that the relevant Applicants have made determinations that: (a) the mortality and expense risk charge is within the range of industry practice; (b) the differential between mortality and expense risk charges provided by the form of the Contract and such charges provided by other forms of the Contracts is reasonable in relation to the differentials in mortality or expense risks assumed; and (c) there is a reasonable likelihood that the distribution financing arrangements will benefit the Separate Account of the Applicant and the affected Contract owner.

4. Each Applicant represents that its Separate Account will invest only in a management investment company that undertakes, in the event it adopts a plan pursuant to Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of whom are not interested persons of such investment company.

5. Each Applicant undertakes to abide by the terms and conditions of any rule that may be adopted by the Commission in the future with regard to the deduction of mortality and expense risk charges.

Conclusion

For the reasons summarized above, Applicants submit that the exemptions requested are 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 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19374 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22098; 811–4457]

Prudential U.S. Government Fund; Notice of Application

July 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Prudential U.S. Government Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The applicant was filed on March 20, 1996, and amended on July 8, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1996, and should be accompanied by proof of service on the applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Seaport Plaza, New York, N.Y. 10292.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, (202) 942–0581, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organization as a business trust under the laws of the Commonwealth of Massachusetts.[1] On November 4, 1985, applicant registered under the Act and filed a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective and applicant commenced its initial public offering on November 7, 1986. Applicant has three classes of shares: Class A, Class B and Class C.

2. On September 28, 1995, applicant's trustees approved a resolution to adopt an Agreement and Plan of

[1] Applicant was organized initially as a Maryland corporation. Pursuant to Articles of Transfer, which were effective in Maryland on October 2, 1986, applicant's assets and liabilities were transferred to an unincorporated business trust organized under the laws of the Commonwealth of Massachusetts.