

request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contacts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, 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 Act, and that, therefore, the Commission should grant the requested order.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-9244 Filed 4-13-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23776, 812-11126]

Merrill Lynch Life Insurance Company, et al.

April 8, 1999.

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

ACTION: Notice of application for an order of approval pursuant to section

26(b) of the Investment Company Act of 1940, as amended (the "1940 Act" or the "Act"), and an order of exemption pursuant to section 17(b) of the 1940 Act from section 17(a) thereof.

APPLICANTS: Merrill Lynch Life Insurance Company ("Merrill Lynch Life"), Merrill Lynch Life Variable Annuity Separate Account A ("Annuity Account A"), ML Life Insurance Company of New York ("ML of New York"), and ML of New York Variable Annuity Separate Account A ("New York Annuity Account A") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants request an order pursuant to section 26(b) of the 1940 Act approving the substitution of units of beneficial interest ("Units") issued by the Select Ten Portfolios (as defined below) of the Equity Investor Fund, Defined Asset Funds (the "Trust") and held by Annuity Account A and New York Annuity Account A (each an "Account"; collectively, the "Accounts"), to support, as applicable, certain variable annuity contracts (collectively, the "Contracts") issued by Merrill Lynch Life or ML of New York (collectively, the "Companies"). Applicants also request an order pursuant to section 17(b) of the Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 ML Select Ten V.I. Trust (the "1999 Portfolio") for Units of the 1998 ML Select Ten V.I. Trust (the "1998 Portfolio") initially held by the Accounts by redeeming Units of the terminating 1998 Portfolio for portfolio securities and cash ("redemption proceeds") and using the redemption proceeds, after adjustment by the distribution agent (The Bank of New York or "BONY") acting on behalf of the Accounts, to purchase Units of the 1999 Portfolio.

FILING DATES: The application was filed on April 30, 1998. It was amended and restated on March 25, 1999 and April 7, 1999.

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, 1999, 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 issues contested. Persons who wish to be notified of a hearing may request notification by writing the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Edward W. Diffin, Jr. Esq., Vice President and Senior Counsel, Merrill Lynch Insurance Group, Inc., 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Lorna J. MacLeod, Attorney, at (202) 942-0684, or Susan M. Olson, Branch Chief, at (202) 942-0680, Office of Insurance Products, (Division of Investment Management).

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, 450 Fifth Street, NW, Washington, DC 29549 ((202) 942-8090).

Applicant's Representations

1. Merrill Lynch Life, a stock life insurance company organized under the laws of the State of Arkansas, is the depositor and sponsor of Annuity Account A. Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811-6459).

2. ML of New York, a stock life insurance company organized under the laws of the State of New York, is the depositor and sponsor of New York Annuity Account A. New York Annuity Account A is registered with the Commission under the Act as a unit investment trust (File No. 811-6466).

3. The Trust is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811-3044). The Trust consists of a number of portfolios (each a "Portfolio"), which includes the 1998 Portfolio, and will include the 1999 Portfolio (each, a "Select Ten Portfolio"; collectively, the "Select Ten Portfolios"). Each Select Ten Portfolio is or will be a series of the Trust created under New York law by a Trust Indenture between Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), the Sponsor and depositor, and BONY acting as the Trustee. Each Select Ten Portfolio will pursue the strategy of buying approximately equal amounts of the ten highest dividend yielding common stocks of the 30 stocks on the Dow Jones Industrial Average ("DJIA") as of a specified date each year ("Strategy Stocks") and hold them for about one year until the Select Ten Portfolio is terminated.

4. The estimated expenses for the 1998 Portfolio consist of a deferral sales charge (the "Transaction Fee") (\$4.70 per 1000 Units), a Trustee's fee (\$0.82 per 1000 Units), Portfolio Supervision, Bookkeeping, and Administrative Expenses (\$0.45 per 1000 Units), Organizational Expenses (\$0.46 per 1000 Units); and Other Operating Expenses (\$0.06 per 1000 Units). The Transaction Fee and the fee for Portfolio Supervision, Bookkeeping, and Administrative Expenses are paid to the Sponsor. The Transaction Fee is a sales charge that compensates the Sponsor for creating and maintaining the Trust, and includes a profit element. It is accrued daily and collected by the Sponsor, MLPF&S, on a deferred basis quarterly and any remainder at the time Units are redeemed. The Transaction Fee is not a liability of the Trust, but a liability of Unit purchasers. No unaccrued (contingent) fee amounts will be owed if Units are redeemed before the Trust terminates. Applicants represent that the fee for Portfolio Supervision, Bookkeeping and Administrative Expenses is paid at cost, consistent with Section 26(a)(2)(C) of the 1940 Act and Rule 26a-1 thereunder. Other expenses are paid to independent third parties and depend on the amounts charged by the third parties.

5. The estimated expenses for the 1999 Portfolio will be similar to those of the 1998 Portfolio. The Transaction Fee for the 1999 Portfolio will be equal to 0.47% of the initial offer price of the 1999 Portfolio. The fee for Portfolio Supervision, Bookkeeping and Administrative Expenses will be at cost. The fee for Organizational Expenses, the Trustee's fee and Other Operating Expenses may vary from those of the 1998 Portfolio depending on the amounts charged by independent third parties. These fees, however, will be without profit to the sponsor consistent with Rule 26a-1 under the Act.

6. Applicants specifically represent, as a basis for receiving the relief requested in this application, that: (a) the Transaction Fee for the 1999 Portfolio, including the nature and purpose of the fee, the manner of the imposition of the fee, the amount of the fee, and its imposition in the proposed substitution described in this application, is covered by the exemptive relief received in Inv. Co. Act Rel. No. 11494 (Dec. 26, 1980) (Order) (the "1980 Order"), Inv. Co. Act Rel. No. 13848 (Mar. 27, 1984) (Order) (the "1984 Order"), and Inv. Co. Act Rel. No. 14717 (Sept. 12, 1985) (Order) (the "1985 Order"); and (b) as a result, the Transaction Fee for the 1999 Portfolio is exempted by the 1980, 1984, and 1985

Orders from Sections 2(a)(32), 2(a)(35), 11(c), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, and no relief is being requested from those Sections or that Rule by this application.

7. The Contracts are variable annuity contracts issued by Merrill Lynch Life and ML of New York. Premiums under the Contracts may be allocated to one or more subaccounts of the Accounts. The Contracts generally permit six transfers per contract year between subaccounts without imposition of a transfer charge. Each Contract reserves to Merrill Lynch Life or ML of New York, as appropriate, the right, subject to Commission approval, to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio held by a subaccount of the relevant Account.

8. Merrill Lynch Life on its own behalf and on behalf of Annuity Account A, and ML of New York on its own behalf and on behalf of New York Annuity Account A, made the 1998 Portfolio available as an investment option under the Contracts through a subaccount of each Account (each a "Select Ten Subaccount"). As described above, each Select Ten Portfolio will hold approximately equal values of the ten stocks in the DJIA having the highest dividend yield as of a specified date each year. In light of the fluctuation in dividend rates and share prices of stocks generally, all of the Strategy Stocks are unlikely to be the same from 1998 to 1999. Consequently, Applicants anticipate that a number of the portfolio securities held by the Select Ten Portfolios will change each year. The organizational structure of the Portfolios dictates that a new Select Ten Portfolio be created that will invest in the Strategy Stocks for that year. Each Select Ten Portfolio terminates after one year, on a contemplated date. As a result, a substitution must occur in order for the Select Ten Subaccount to remain continuously invested in a Select Ten Portfolio.

9. The 1998 Portfolio will terminate on April 30, 1999, and holders of units of that Portfolio will receive Units of the 1999 Portfolio, which will acquire approximately equal values of the ten stocks in the DJIA having the highest dividend yields as of a specified date prior to April 30, 1999, and will hold those stocks for approximately one year. As holders of Units of the 1998 Portfolio, the Accounts will, absent unusual circumstances and subject to obtaining the relief requested in the application, receive units of the 1999 Portfolio on behalf of owners of the Contracts ("Owners") on April 30, 1999. The purpose of this substitution is to provide Owners with a Select Ten

Subaccount that utilizes the described investment strategy on a continuous basis under the Contracts.

10. Applicants represent that by prominent disclosure within the prospectuses for the Contracts and the Accounts, they have notified all Owners and prospective Owners of a Contract in advance of the intention of Merrill Lynch Life and ML of New York to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio. The prospectuses advised Owners and prospective Owners that the 1998 Portfolio will be replaced by the 1999 Portfolio on a specified date (the "Rollover Date"), subject to obtaining the relief requested in the application. The prospectuses inform Owners and prospective Owners that they may continue to allocate premium payments and transfer cash value to the Select Ten Subaccount investing in the 1998 Portfolio after the Rollover Date; however, as of the Rollover Date, the Select Ten Subaccount will invest in the 1999 Portfolio (rather than in the 1998 Portfolio). The prospectuses further inform Owners and prospective Owners that from the Rollover Date to thirty days after the Rollover Date, Owners will be permitted to make one transfer from the Select Ten Subaccount of all of the cash value under a Contract invested in the Select Ten Subaccount to other available subaccounts of the relevant Account, without that transfer counting as one of the limited number of transfers among subaccounts of an Account permitted in a Contract year free of charge. The prospectuses also explain that neither Company will exercise any right reserved by it under the Contracts to impose additional restrictions on transfers until at least thirty days after the proposed substitution.

11. Applicants propose to substitute Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

12. The proposed substitution will be accomplished by the in-kind redemption of Units of the terminating 1998 Portfolio. The Trust's distribution agent, acting on behalf of the relevant Account, will adjust the in-kind proceeds (Strategy Stocks and cash) so that their overall composition matches the investment profile—the Strategy Stocks—of the 1999 Portfolio. The distribution agent contributes the adjusted proceeds to the 1999 Portfolio. Following this contribution, the trustee of the 1999 Portfolio will issue the appropriate number of units in the 1999 Portfolio to the relevant Account. The

adjustment of the redemption proceeds involves brokerage expenses that will be reflected in the amount contributed to the 1999 Portfolio and, thus, will be borne by Owners remaining in the Select Ten Subaccount through the rollover. Applicants state that these brokerage expenses are customary expenses and are analogous to brokerage expenses incurred by management investment companies which sell and buy portfolio securities throughout the course of any given year.

13. As soon as reasonably practicable following the proposed substitution (but in any event, within five days after April 30, 1999), any Owners affected by the substitution will receive an updated prospectus for the Contracts accompanied by a prospectus for the 1999 Portfolio. In addition, Applicants undertake to accompany the updated prospectuses with a letter to affected Owners that highlights the substitution and the investment by the Select Ten Sub-Account in the 1999 Portfolio. The prospectus for the 1999 Portfolio will specify the Strategy Stocks of the 1999 Portfolio. The updated prospectus for the Contracts will reflect information about the 1999 Portfolio and will inform Owners that they may make one transfer of all contract value under a contract invested in a select Ten Subaccount on the date of the prospectus to another subaccount within thirty days of the substitution without that transfer counting as one of a limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year, free of charge. The Prospectus will also state that the Companies will not exercise any rights reserved by them under any of the Contracts to impose any additional restriction on transfers until at least thirty days after the proposed substitution.

14. Applicants state that the proposed substitution will take place at relative net asset values and, except for the brokerage expenses described above that will be incurred in establishing the 1999 Portfolio, with no other change in the amount of any Owners contract value or death benefit or in the dollar value of his or her investment in any subaccount investing the Select Ten Trust, or in any of the Accounts. No sales load deduction, other than the Transaction Fee, will be made beyond those already provided for in the Contracts. Owners will not incur addition fees or charges as a result of the proposed substitution nor will their rights, or the obligations of Merrill Lynch Life or ML of New York, as applicable, under the Contracts be altered in any way. Applicants represent that all expenses incurred in

connection with the proposed substitution, including legal, accounting and other fees and expenses (except for the brokerage expenses described above), will be paid by Merrill Lynch Life or ML of New York. The proposed substitution will not impose any tax liability on Owners, and by itself, will not cause the fees and charges currently being paid by existing Owners to be greater after the proposed substitution than before the proposed substitution. Units of the 1999 Portfolio will be subject to the Transaction Fee, which will be assessed at a rate of 0.4% of the initial offer price. Applicants also represent that the proposed substitution will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. The Companies will not exercise any right either may have under the Contracts to impose additional restrictions on transfers or eliminate the transfer privilege under any of the Contracts for a period of at least thirty days following the proposed substitution.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(b) of the 1940 Act approving the substitution of Units of the 1999 Portfolio for Units of the terminating 1998 Portfolio currently held by the Select Ten Subaccounts by redeeming Units of the 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

2. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, section 26(b) states:

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

3. Applicants assert that the proposed substitution is substantially consistent with the standards that the Commission and its staff have applied to substitutions that have been approved in the past and are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

4. Applicants assert that the 1999 Portfolio will be suitable and

appropriate investment vehicle for Owners. The 1999 Portfolio will have identical investment objectives and policies to the 1998 Portfolio. Furthermore, Applicants assert that an integral aspect of the long term investment strategy of the Select Ten Portfolios is the annual replacement of any portfolio securities that are no longer among the ten highest dividend yielding stocks in the DJIA. Under the proposed structure, this is accomplished by the creation of the 1999 Portfolio that will hold (for a one year period) approximately equal values as of the date of deposit of ten highest dividend yielding stocks in the DJIA. Applicants assert that the proposed substitution is necessary to permit Owners to pursue the long-term investment strategy for which the Select Ten Portfolios are designed.

5. In addition, Applicants note that the proposed substitution may be only temporary in character because Owners may always exercise their own judgment as to the most appropriate investment vehicle. Owners may, pursuant to the terms of their Contracts, and for 30 days after the proposed substitution without charge, transfer contract value to another subaccount.

6. Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit the substitution of Units of the 1999 Portfolio for Units of the 1998 Portfolio initially held by the Select Ten Subaccounts by redeeming Units of the terminating 1998 Portfolio and using the redemption proceeds to purchase Units of the 1999 Portfolio.

7. The Commission has previously granted an exemption from Section 17(a) of the 1940 Act to the Trust permitting terminating series of the Trust to sell portfolio securities to new series of the Trust.¹ At the time the exemption was obtained, the use of Portfolios of the Trust as a funding vehicle for insurance company separate accounts was not contemplated.

8. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other

¹ Defined Asset Funds—Equity Income Fund, Inv. Co. Act Rel. No. 20517 (Aug. 31, 1994) (Order) (granting relief under Sections 6(c) and 17(b) of the 1940 Act for the Trust, on behalf of its present and future series, to engage in rollover transactions such as those that would occur as a result of the proposed substitution).

property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

9. Section 2(a)(3)(F) of the 1940 Act defines the term "affiliated person of another person" as "if such other person is an unincorporated investment company not having a board of directors, the depositor thereof." As the Trust is an unincorporated investment company that does not have a board of directors, the depositor thereof, MLPF&S, is an affiliated person of the Trust.

10. Pursuant to Section 2(a)(3)(C) of the 1940 Act, "any person directly or indirectly controlling, controlled by, or under common control with" another person is an "affiliated person" of such other person. MLPF&S is a wholly owned subsidiary of Merrill Lynch & Co., Inc. As a wholly owned subsidiary of Merrill Lynch & Co., Inc., Applicants represent that MLPF&S is "controlled by" Merrill Lynch & Co., Inc. within the meaning of Section 2(a)(9) of the 1940 Act.

11. Applicants further represent that each Company is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., and as such may be deemed to be controlled by Merrill Lynch & Co., Inc. Consequently, each of the Companies is an affiliated person of MLPF&S, and, as such, is an affiliated person of an affiliated person of the Trust.

12. To the extent that Strategy Stocks formerly held by the 1998 Portfolio are sold by the Trust's distribution agent to the 1999 Portfolio, Applicants submit that the proposed substitution could entail the indirect purchase of Units of the 1999 Portfolio with portfolio securities of the 1998 Portfolio, and the indirect sale of Units of the 1998 Portfolio for portfolios securities of the 1999 Portfolio by the Companies, acting as principal, from and to the Trust, and therefore would be in contravention of Section 17(a).

13. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its

registration statement and reports filed under the 1940 Act; and

(3) The proposed transaction is consistent with the general purposes of the 1940 Act.

14. Applicants assert that the terms of the proposed substitution, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitution is consistent with the policies of the Trust and of the affected Portfolios, as recited in the current registration statements and reports filed by each under the 1940 Act. Finally, Applicants assert that the proposed substitution is consistent with the general purposes of the 1940 Act.

15. Rule 17a-7 under the 1940 Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers. Applicants assert that although they cannot rely on Rule 17a-7, they will comply with the substance of the rule.

Conclusion

Applicants submit that, for the reasons summarized above, the request relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

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

[Rel. No. IC-23775; File No. 812-10798]

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

April 7, 1999.

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

ACTION: Notice of application for an order under Section 11 of the Investment Company Act of 1940 (the "1940 Act" or "Act") permitting certain

exchange offers between certain unit investment trusts and certain open-end management investment companies.

APPLICANTS: The Prudential Insurance Company of America ("Prudential"), The Prudential Individual Variable Contract Account (the "VIP Nonqualified Account"), The Prudential Qualified Individual Variable Contract Account (the "VIP Qualified Account"), Global Utility Fund, Inc., Nicholas-Applegate Fund, Inc., Prudential Balanced Fund, Prudential Developing Market Fund, Prudential Diversified Bond Fund, Inc., Prudential Emerging Growth Fund, Inc., Prudential Equity Fund, Inc., Prudential Equity Income Fund, Inc., Prudential Europe Growth Fund, Inc., Prudential Global Genesis Fund, Inc., Prudential Global Limited Maturity Fund, Inc., Prudential Government Income Fund, Inc., Prudential Government Securities Trust, Prudential High Yield Fund, Inc., Prudential High Yield Total Return Fund, Inc., Prudential Index Series Fund, Prudential Intermediate Global Income Fund, Inc., Prudential International Bond Fund, Inc., Prudential Mid-Cap Value Fund, Prudential MoneyMart Assets, Inc., Prudential Natural Resources Fund, Inc., Prudential Pacific Growth Fund, Inc., Prudential Real Estate Securities Fund, Prudential Small-Cap Quantum Fund, Inc., Prudential Small Company Value Fund, Inc., Prudential Structured Maturity Fund, Inc., Prudential 20/20 Focus Fund, Prudential Utility Fund, Inc., Prudential World Fund, Inc., The Global Total Return Fund, Inc., The Prudential Investment Portfolios, Inc., Pruco Securities Corporation ("Pruco"), the Prudential Investment Management Services LLC ("PIMS").

SUMMARY OF APPLICATION: Applicants seek an order to permit exchanges from individual variable annuity contracts of the VIP Nonqualified Account and the VIP Qualified Account (collectively, the "VIP Accounts") and similar current and future variable annuity accounts of Prudential or an affiliated insurance company to certain open-end management investment companies.

FILING DATE: The application was filed on September 24, 1997 and amended on March 22, 1999.

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 should be received by the Commission by 5:30