

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.*

[FR Doc. 99-9316 Filed 4-13-99; 8:45 am]

BILLING CODE 8010-01-M

### 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

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 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, SEC, 450 Fifth Street, NW Washington, DC 20549-0609. Applicants, c/o Christopher E. Palmer, Shea & Gardner, 1800 Massachusetts Ave., NW, Washington, DC 20036.

**FOR MORE INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, 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 is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (202) 942-8090.

#### Applicants' Representations

1. Prudential is a mutual life insurance company organized under the laws of New Jersey. Prudential issues the individual Variable Investment Plan variable annuity contracts (the "VIP contracts").

2. The VIP Nonqualified Account and the VIP Qualified Account (collectively, the "VIP Accounts") are separate accounts of Prudential holding assets relating to the VIP contracts. They are registered as unit investment trusts under the 1940 Act. Both VIP Accounts currently have thirteen separate subaccounts, each of which invests in a single corresponding portfolio of The Prudential Series Fund, Inc. (the "Series Fund"), an open-end management investment company. Shares of the Series Fund are currently sold exclusively to separate accounts of Prudential and certain other affiliated insurance companies to fund benefits under variable annuity and variable life contracts. The Series Fund may in the future sell its shares to unaffiliated insurance companies and qualified plans.

3. The following Applicants or series of an Applicant are each individually referred to as a "Prudential Fund" and collectively referred to as the "Prudential Funds": Global Utility Fund, Inc.; Nicholas-Applegate Growth Equity Fund of the Nicholas-Applegate Fund, Inc.; Prudential Balanced Fund; Prudential Developing Markets Equity

Fund and Prudential Latin America Equity Fund of the Prudential Developing Market Fund; Prudential Diversified Bond Fund, Inc.; Prudential Emerging Growth Fund, Inc.; Prudential Equity Fund, Inc.; Equity Income Fund, Inc.; Prudential Europe Growth Fund Inc.; Prudential Global Genesis Fund, Inc.; Limited Maturity Fund of the Prudential Global Limited Maturity Fund, Inc.; Prudential Government Income Fund, Inc.; Money Market Series, U.S. Treasury Money Market Series and Short-Intermediate Term Series of the Prudential Government Securities Trust; Prudential High Yield Fund, Inc.; Prudential High Yield Total Return Fund, Inc.; Prudential Stock Index Fund of the 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.; Income Portfolio of the Prudential Structured Maturity Fund, Inc.; Prudential 20/20 Focus Fund; Prudential Utility Fund, Inc.; Global Series and International Stock Series of the Prudential World Fund, Inc.; The Global Total Return Fund, Inc.; and Prudential Active Balanced Fund, Prudential Jennison Growth Fund and Prudential Growth & Income Fund of The Prudential Investment Portfolios, Inc.

4. With the exception of three money market funds discussed below, each Prudential Fund offers four classes of shares, two of which are relevant here. Class A shares are offered with: (i) up to a 5% front-end sales charge and (ii) a fee pursuant to Rule 12b-1 under the Act ("Rule 12b-1 fee") of up to 0.30%. Class C shares are offered with: (i) a contingent deferred sales charge of 1% on redemptions made within one year of purchase and (ii) a Rule 12b-1 fee of 1%. The three money market funds (the Money Market Series of the Prudential Government Securities Trust, the U.S. Treasury Money Market Series of the Prudential Government Securities Trust, and Prudential MoneyMart Assets, Inc.) have only two classes of shares—A shares and Z shares. Each Prudential Fund currently pays an investment advisory fee and certain other expenses.

5. Pruco is an indirect, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"). Pruco distributes the VIP contracts.

6. PIMS is a direct, wholly-owned subsidiary of Prudential and is a registered broker-dealer under the 1934 Act. It distributes the shares of each class of the Prudential Funds.

7. Prudential offers the VIP contracts through the VIP Qualified Account for use in connection with retirement arrangements that qualify for federal tax benefits under sections 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986, as amended (the "Code"). Prudential offers nonqualified VIP contracts through the VIP Nonqualified Account. A contract owner may choose to have purchase payments invested in any of the respective Account's subaccounts. Subject to certain limitations, contract owners may transfer subaccount units at net asset value among the various subaccounts.

8. Applicants request an order to allow VIP contract owners to exchange any or all of their subaccount units for shares of a Prudential Fund under one of the two following exchange offers. Exchange offer "A" would be available only for exchanges of aggregate subaccount units worth \$1,000,000 or more. Contract owners would exchange subaccount units for Prudential Fund Class A shares, and any front-end sales charge customarily assessed on purchases of Class A shares would be waived. Any such exchange would be effected at the relative net asset values of the securities exchanged, and would be priced in accordance with Rule 22c-1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Exchange offer "C" would be available only for exchanges of aggregate subaccount units worth less than \$1,000,000. Contract owners would exchange subaccount units for Prudential Fund Class C shares. Any such exchange would be effected at the relative net asset values of the securities exchanged and would be priced in accordance with Rule 22c-1 under the Act. No sales load, administrative fee, redemption fee, or other transaction charge would be imposed at the time of the exchange, and Prudential would waive: (1) any recapture of any bonus amount exchanged; and (2) any annual maintenance charge that would otherwise be deducted upon withdrawal of the full value of the contract. Moreover, any contingent deferred sales charge that might otherwise be

applicable to the Class C shares when subsequently sold would be waived.

9. With respect to both exchange offers, Prudential would limit the offer to exchanges in which the following two criteria were met. First, the exchange must involve a group plan. Second, the plan sponsor must agree that, if it terminates its recordkeeping arrangement with Prudential or the affiliate when the VIP contract surrender charge or bonus amount recapture provision would have been applicable had the exchange not occurred (or, for those plans that do not use Prudential or an affiliate for recordkeeping, if the plan withdraws a set portion of its investment in the Prudential Funds during that time period), the plan sponsor will pay Prudential a negotiated amount designed to approximate the VIP surrender charge and/or recapture of bonus amount that would have been applicable. The plan sponsor must agree that any such payment would not be assessed directly or indirectly against plan participants. Applicants represent that the purpose of this second requirement is to prevent plan sponsors from using the exchange offer simply to avoid sales charges that would be applicable if the plan sponsor surrendered the VIP contract for its cash surrender value and ended its business relationship with Prudential.

10. Prudential would, in its sole discretion, determine to whom an exchange offer would be made, the time period which the exchange offer would be in effect, and when to terminate an exchange offer. Also, with respect to both offers, Prudential may establish fixed periods of time for exchanges under a particular contract or group of contracts (a "window") of at least 60 days in length. Any pre-set window would be at least 60 days in length, and no open-ended exchange offer would be terminated or its terms amended materially without prominent notice to any contract owners subject to that offer of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment; provided, however, that no such notice would be required if, under extraordinary circumstances, either: (a) there were a suspension in redemption of the exchange security under section 22(e) of the 1940 Act or rules thereunder; or (b) the offering company were temporarily to delay or cease the sale of the security because it was unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

11. Applicants represent that at the commencement of the exchange offers, and as long as the offers remain in effect, the prospectus of each VIP Account will: (1) Describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange. Applicants anticipate that the exchange offers would be extended only to persons that have been provided a copy of the current VIP Qualified Account or VIP Nonqualified Account prospectus. As long as that were the case and the disclosure about the exchange offers were in the respective prospectus, no additional disclosure about the exchange offers would be included in the prospectuses for the Prudential Funds, because the Prudential Funds are offered to a significant number of persons who would not be given the exchange offers. Applicants represent that if the exchange offers are extended to persons that have not been provided copies of a current VIP Account prospectus, the prospectus(es) for the relevant Prudential Fund(s) will also; (1) describe the terms of each offer; (2) disclose that no redemption or administrative fee would be imposed in connection with the exchange program; (3) disclose that each exchange offer is subject to termination and its terms are subject to change; and (4) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange.

12. With respect to the exchange security, Applicants request that the Commission order extend to all other current and future variable annuity contracts issued by Prudential or an affiliated insurance company, to the separate accounts relating to any such contracts, and to underwriters distributing the contracts ("Future Contracts").

#### Applicants' Legal Analysis

1. Section 11(a) of the Act provides, in pertinent part, that it shall be 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 of any other open-end investment company, to exchange that 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 to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges are at relative net asset value, Commission approval is required for the proposed exchanges because of the involvement of the VIP Accounts, each of which is a registered unit investment trust. Applicants state that they cannot rely on existing exemptive rules because neither Rule 11a-2 nor Rule 11a-3 permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of Section 11 indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made "solely for the purpose of exacting additional selling charges." H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed exchange offers involve no possibility of such abuse because the acquired shares would be subject to neither a front-end nor deferred sales charge. With respect to Exchange offer "A," the acquired Class A shares would have no deferred sales charge and any front-end sales charge would be waived. Similarly, with respect to Exchange offer "C," the acquired Class C shares have no front-end sales charge and the deferred sales charge would be waived.

3. Applicants assert that the Commission, in adopting Rule 11a-3, did not prohibit or restrict exchange offers where the acquired mutual fund shares involve a fee under Rule 12b-1. They further assert that the Commission recognized the possibility that the acquired security might have a 12b-1 fee, by considering that as a factor in calculating the holding period for deferred sales charges in Rule 11a-3(b)(5)(i).

4. Applicants submit that providing class relief with respect to the exchanged security is appropriate. All exchanges that would be permitted under the order would be on the same terms as the exchanges between the VIP Accounts and the Prudential Funds,

including waiving any front-end sales charge or contingent deferred sales charge on the exchanged security and the acquired security. Therefore, there would be no possibility of the switching abuses Congress sought to prevent through Section 11. Without class relief, before Prudential annuity contract owners could be given additional exchange options, Applicants would have to apply for and obtain additional exemptive orders. Applicants believe that these additional applications would present no new issues under the 1940 Act not already addressed in their application.

5. Applicants submit that the proposed offers of exchange meet all the objectives of Section 11, and would provide a benefit to contract owners by providing new investment options, and an attractive way to exchange existing interests in variable contracts for interests in open-end management investment companies.

### Conclusion

For the reasons summarized above, Applicants request that the Commission issue an order under sections 11(a) and 11(c) of the Act approving the exchange offers described in the application.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-9243 Filed 4-13-99; 8:45 am]

BILLING CODE 8010-01-M

### SMALL BUSINESS ADMINISTRATION

#### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Comments should be submitted on or before June 14, 1999.

**FOR FURTHER INFORMATION CONTACT:** Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202-205-6629.

#### SUPPLEMENTARY INFORMATION:

**Title:** "Prime Contracts Program Quarterly Report, Part A Traditional PCR and Part B Breakout PCR."

**Form No's:** 843A & 843B.

**Description of Respondents:** Procurement Center Representatives.

**Annual Responses:** 4.

**Annual Burden:** 1,340.

**Comments:** Send all comments regarding this information collection to Susan Monge, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202-205-7316.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** "Small Business Development Centers Project. Officer's Checklist."

**Form No:** 59.

**Description of Respondents:** Small Business Development Centers.

**Annual Responses:** 456.

**Annual Burden:** 456.

**Comments:** Send all comments regarding this information collection to Terry Nelson, Business Development Specialist, Office of Small Business Development, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202-205-7304.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** "U.S. Small Business Administration's Application Survey."

**Form No's:** 1843.

**Description of Respondents:** Individuals seeking employment.

**Annual Responses:** 7,500.

**Annual Burden:** 1,275.

**Comments:** Send all comments regarding this information collection to Carol Cordova, Employment Specialist, Office of Human Resources, Small Business Administration, 409 3rd Street SW, Suite 4200, Washington, DC 20416. Phone No: 202-205-6162.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** "SBA Guaranty Lender's Customer Satisfaction Survey."

**Form No's:** 1984.

**Description of Respondents:** Guaranty Lenders.

**Annual Responses:** 1.

**Annual Burden:** 2,779.

**Comments:** Send all comments regarding this information collection to

George Price, Director Marketing Research, Office of Communications & Public Liaison, Small Business Administration, 409 3rd Street SW, Suite 7450, Washington, DC 20416. Phone No: 202-205-7124.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Title:** "Office of Women's Business Ownership Year-End Follow-up Survey."

**Form No's:** 1976.

**Description of Respondents:** Women-owned Businesses.

**Annual Responses:** 6,850.

**Annual Burden:** 770.

**Comments:** Send all comments regarding this information collection to Tonya Smith, Program Specialist, Office of Woman Business Ownership, Small Business Administration, 409 3rd Street SW, Suite 4400, Washington, DC 20416. Phone No: 202-205-6676.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

**Jacqueline K. White,**

*Chief, Administrative Information Branch.*

[FR Doc. 99-9264 Filed 4-13-99; 8:45 am]

BILLING CODE 8025-01-P

### SMALL BUSINESS ADMINISTRATION

[License No. 01/71-0372]

#### Zero Stage Capital VI, L.P. Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financials which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing to Kinetix Pharmaceuticals, Inc., 200 Boston Avenue, Suite 4700,