



Margaret M. Foran  
Chief Governance Officer, VP, and Corporate Secretary

Prudential Financial, Inc.  
751 Broad Street, Newark NJ 07102-3777  
Tel 973-802-7770 Fax 973-802-8287  
margaret.foran@prudential.com

December 5, 2011

VIA E-MAIL

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Prudential Financial, Inc.*  
*Shareholder Proposal of Daniel F. Case*  
*Exchange Act of 1934 - Rule 14a-8*

RECEIVED  
2011 DEC -6 PM 2:03  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Ladies and Gentlemen:

This letter is to inform you that Prudential Financial, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareholders (collectively, the "2012 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from Daniel F. Case (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2012 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that, to reduce the risk that buyers will be misled as to the return they are getting on their money, annuity contracts not provide for any value other than the Account Value that is an accumulation of purchase payments and interest or other credits.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2012 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations (i.e., the particular products and services offered by the Company).

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Deals With Matters Related To The Company's Ordinary Business Operations.**

The Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. According to the Commission release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations. Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations. The first consideration is the subject matter of the proposal; the 1998 Release provides that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second consideration is the degree to which the proposal attempts to "micro-manage" a company by "probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations because it deals with the Company's ability to offer certain products – specific types of annuity contracts – to its customers. The Staff consistently has concurred that decisions regarding the sale of particular financial products or services are part of a company's ordinary business operations and thus may be excluded under Rule 14a-8(i)(7). In *JPMorgan Chase & Co.* (avail. Mar. 16, 2010), the Staff concurred in the exclusion of a proposal which sought to implement a policy eliminating the practice of issuing certain types of loans. In arguing for exclusion under Rule 14a-8(i)(7), *JPMorgan* noted that the loans at issue were complex financial instruments about which shareholders may not be in a position to make informed judgments. The Staff agreed, finding that the proposal “concern[ed] the sale of particular services” and therefore permitted *JPMorgan* to exclude the proposal. *See also JPMorgan Chase & Co.* (avail. Mar. 12, 2010) (proposal requesting that the company assess the impact of barring future loans to companies engaged in mountain top removal coal mining excludable as related to the sale of a particular service); *Bank of America Corporation (Trillium Asset Management Corporation)* (avail. Feb. 24, 2010) (same); *JPMorgan Chase & Co.* (avail. Feb. 26, 2007) (proposal requesting that the company prepare a report about policies to safeguard against the provision of financial services to clients that would enable capital flight or tax avoidance excludable as relating to the sale of particular services); *Bank of America Corporation* (avail. Feb. 21, 2007) (same); *Citigroup Inc.* (avail. Feb. 21, 2007) (same); *BankAmerica Corp.* (avail. Feb. 18, 1977) (proposal requesting that the company implement conditions on providing loans to nuclear facilities excludable because “the procedures applicable to the making of particular categories of loans, the factors to be taken into account by lending officers in making such loans, and the terms and conditions to be included in certain loan agreements are . . . part of [the company's] every day [sic] business operations.”).

Similarly, the Staff has permitted the exclusion of proposals relating to other types of products and services. *See, e.g., Pepco Holdings, Inc.* (avail. Feb. 18, 2011) (proposal urging the company to pursue the market for solar technology excludable as concerning the sale of particular products and services); *Wal-Mart Stores, Inc.* (avail. Mar. 30, 2010) (proposal requiring that all company stores stock certain amounts of locally produced and packaged food excludable as concerning the sale of particular products); *Lowe's Companies, Inc.* (avail. Feb. 1, 2008) (proposal encouraging the company to end the sale of glue traps excludable as relating to the sale of a particular product); *The Kroger Co.* (avail. Mar. 20, 2003) (proposal requesting the company cease making available certain shopping cards to its customers excludable as relating to the manner in which a company sells and markets its products). In addition, the Staff has consistently permitted exclusion of proposals aimed at altering only a certain aspect of an existing product or service. *See, e.g., General Mills, Inc.* (avail. July 2, 2010) (proposal requesting limits on the use of salt and other sodium compounds in the company's food products excludable as relating to the selection of particular ingredients in the company's products); *International Business Machines Corp.* (avail. Jan. 22, 2009) (proposal

requesting that the company offer more of its software products in “open source” formats excludable as relating to the design, development and licensing of software products); *Marriott International, Inc.* (avail. Feb. 13, 2004) (proposal requesting that the company eliminate only sexually explicit content from its hotel gift shops and television programming excludable as relating to the sale and display of a particular product and the nature, content and presentation of programming); *BellSouth Corp.* (avail. Jan. 25, 1999) (proposal seeking to amend the terms and prices in cellular phone service contracts for existing customers excludable as relating to product terms and prices); *International Business Machines Corp.* (avail. Jan. 14, 1986) (proposal requesting that the company provide its software with “source code” instead of “object code” excludable as relating to the form in which the company’s programs are delivered).

The Proposal directly relates to the Company’s ordinary business operations in seeking to limit the availability of certain annuity contracts by specifying the manner in which interest may accumulate under the annuity contracts that the Company offers to its customers. The Company is a global financial services company, which, through its subsidiaries, offers an array of financial products and services, including the annuities referred to in the Proposal. The Company’s or its subsidiaries’ ability to set the terms and conditions of the annuity contracts offered to customers is a fundamental component of management’s control of the Company’s day-to-day operations, which control is delegated to the Company’s management (as opposed to its shareholders) by the laws of the state of the Company’s incorporation. *See, e.g.,* N.J. REV. STAT. § 14A:6-1(1) (“The business and affairs of a corporation shall be managed by or under the direction of its board, except as in this act or in its certificate of incorporation otherwise provided.”). Moreover, the details and mechanics of the Company’s annuity contracts are disclosed in the prospectuses, sales materials and contracts, which are either filed with, or approved by, applicable regulators, including the Commission, state insurance regulators and FINRA. Thus, the Company’s decision as to whether to offer a particular annuity to customers, as well as the features of each annuity contract (including the manner in which interest accumulates), are precisely the kind of fundamental, day-to-day operational matters covered by the ordinary business operations exclusion under Rule 14a-8(i)(7). Accordingly, consistent with Staff precedent, the Proposal is excludable under Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.


## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2012 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

Office of Chief Counsel  
Division of Corporation Finance  
December 5, 2011  
Page 5

If we can be of any further assistance in this matter, please do not hesitate to call me at (973) 802-7770 or Amy L. Goodman of Gibson, Dunn & Crutcher LLP at (202) 955-8653.

Sincerely,

  
Margaret M. Foran

Enclosures

cc: Daniel F. Case

101192488.6

Daniel F. Case

\*\*\*FISMA &amp; OMB Memorandum M-07-16\*\*\*

November 14, 2011

CERTIFIED MAIL

Ms. Margaret M. Foran  
Chief Governance Officer and Corporate Secretary  
Prudential Financial, Inc.  
751 Broad Street  
Newark, New Jersey 07102

Re: Shareholder proposal

Dear Ms. Foran:

I submit the following proposal for inclusion in the proxy materials for the next annual shareholder meeting. I own 416 shares of Prudential Financial common stock, registered in my name, and intend to continue holding them through the date of the next annual shareholder meeting.

**“REVISION OF ANNUITY CONTRACT PROVISIONS****WHEREAS:**

One or more Prudential companies have been selling annuity contracts containing an optional feature under which the buyer's purchase payments generate a value called the “Protected Withdrawal Value.” That value receives interest credits at a guaranteed rate, such as 5% per year, with no charges deducted. As a result, buyers may be led to believe they are guaranteed, for example, a 5% annual return on their money. That is, however, not the case. The buyer can gain access to the Protected Withdrawal Value only by converting it to a life income (with a death benefit included), and the factor used in making the conversion is much lower than typical annuitization factors.

The optional feature permits withdrawals, after income payments have begun, in amounts exceeding the established annual income amount. This benefit must be viewed in perspective. An “excess” withdrawal reduces the remaining income payments in a proportion that depends not on the Protected Withdrawal Value, but on the Account Value. The Account Value, which depends on the earnings of investments made by the company and is subject to various charges, may be much smaller than the Protected Withdrawal Value. The income recipient could, for example, lose all future income payments by withdrawing an amount much smaller than the Protected Withdrawal Value.

Nor can an income recipient in poor health outmaneuver the company by withdrawing a large amount at a strategic moment. Any amount thus withdrawn will, with minor exceptions, reduce the death benefit by an equal amount, thus negating the recipient's purpose.

Calculations have been done with reference to a contract that was issued with the optional feature and a 6% guarantee. It was found that if the buyer elects to begin income payments at age 70, the same contract without the optional feature would produce as much annual income, with a comparable death benefit, if the investments made by the company have returned 0% per year net of charges. Hence in that scenario, the optional feature will have returned only 0% (not a guaranteed 6%) per year (plus the ability to make “excess” withdrawals).

Instead of attaching a guaranteed minimum interest rate to the Protected Withdrawal Value, the company could attach it to the Account Value. Prospective buyers could then know what return on their money is actually guaranteed. The income provided under the optional feature could be based on factors applied to the Account Value.

Even without an interest-rate guarantee, the crediting of interest to a Protected Withdrawal Value would be conducive to the same kind of misunderstanding as can occur now.

**RESOLVED:**

Shareholders request that, to reduce the risk that buyers will be misled as to the return they are getting on their money, annuity contracts not provide for any value other than the Account Value that is an accumulation of purchase payments and interest or other credits.”

Sincerely,

*Daniel F. Case*