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December 30, 2016

By Hand and by Email

Brent J. Fields, Esq.
Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: Request for a Hearing on Hartford Life Ins. Co. Substitution
Applications, SEC File Nos. 812-14446 & 812-14447

Dear Mr. Fields:

Kalorama Legal Services, PLLC is counsel to Capital Research and Management Co. ("CRMC"), a registered investment adviser managing the American Funds Insurance Series ("AFIS") mutual funds. CRMC opposes the above-captioned applications ("Applications"), filed by Hartford Life Ins. Co. ("Hartford Life") and others (collectively, "Applicants"), initially on April 21, 2015, but amended twice thereafter, on May 25th and August 31st, 2016, and respectfully requests that a hearing be held on the Applications before any decision by the Commission (or its Staff, acting pursuant to delegated authority) is rendered.

The Applications seek formal Commission approval for an unprecedented substitution proposal—unilaterally overriding individual investment decisions regarding *investors'* choices of assets underlying several hundred thousand variable annuity contracts purchased from Hartford Life, and substituting Applicants' conflicted investment choices. Applicants propose that their unprecedented objective be achieved through express Commission authorization for the Applicants to bypass the purchasers of these contracts, denying those purchasers their inherent—and contractual—right to exercise their own investment judgment. Commission approval would also authorize the Applicants' precipitous and unilateral termination of existing contractual relationships between the variable annuity contract holders and investment providers, such as AFIS, as well as investment managers of those funds, like CRMC,

without any consideration of the rights of these contractholders. The Commission should not lend its imprimatur to such an unprecedented substitution.

We urge that the Commission decline to issue the requested orders, instead directing Applicants to follow the customary, and less convoluted, method by which new insurance dedicated funds are developed and marketed to variable annuity contractholders—that is, by establishing and marketing new funds as additional investment choices for contractholders. This well established method requires no government intrusion or action, and is wholly lacking in the controversy surrounding the instant Applications. This approach would also afford contractholders the freedom to which they are contractually entitled—to determine for themselves the value for, and the personal aptness of, the Applicants' proposed new funds in light of each contractholder's individual circumstances.

On behalf of CRMC, we hereby request a hearing on the Applications.¹

I. Reasons for Granting the Requested Hearing

The Applicants seek a Commission Order authorizing them to substitute certain securities underlying the variable annuity contracts sold by Hartford Life pursuant to Investment Company Act of 1940 ("1940 Act") §26(c),² as well as an Order pursuant to 1940 Act §17(b),³ exempting the proposed substitution transactions from 1940 Act §17(a).⁴ In

¹ The Applications would, if approved without a hearing by the Commission (or if approved by its Staff, pursuant to delegated authority), abrogate existing and valuable arms-length contracts, without affording CRMC, AFIS or AFIS funds' investors (adversely affected contractholders) that affirmatively chose to invest in AFIS Funds, due process of law. Hartford Life contract holders own approximately \$7.3 billion in the AFIS Funds, and the Applications would affect 5-14% of each affected Fund's assets, as of November 30, 2016. Under the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, and the 1940 Act, CRMC, as the manager of the AFIS Funds, would suffer demonstrable and material harm by the grant of the government action sought in the Applications, and therefore has standing to contest these Applications and to request a hearing on them. *See* discussion at p. 15, *infra*.

² 15 U.S.C. §80a-26(c).

³ 15 U.S.C. §80a-17(b).

⁴ 15 U.S.C. §80a-17(a).

straightforward terms, the Applicants seek to replace actively-managed third party funds, selected by variable annuity contractholders themselves, in the exercise of their individual investment judgments, with quantitative, index-type funds, selected by the Applicants, and created as well as managed by Hartford Investment Management Company (“HIMCO”), an affiliate of Hartford Life, from which HIMCO will earn advisory fees.⁵ Based on public filings, hundreds of thousands of variable annuity contracts will be affected by the proposed substitutions, amounting to about \$16.1 billion in fund shares.⁶ If the Applications are granted, contractholders will suffer real, and immediate, harm, including higher fees due to the loss of advantageous advisory fee breakpoints.

The Applicants’ substitution request is

- Neither necessary nor appropriate;
- Not in the public interest;
- Inconsistent with the protection of investors; and
- Inconsistent with the purposes fairly intended by the policy and provisions of the 1940 Act,

the standards under the 1940 Act that the Applications must satisfy.

The proposed involuntary substitutions would materially decrease the value of the contracts investors originally purchased. Not only would contractholders be deprived of the investments they originally chose, but many contractholders also purchased investment guarantees, based on the performance of these actively-managed funds. The proposed replacement funds would provide contractholders with markedly lower upside, thereby devaluing the guarantees these investors purchased, and depriving contractholders of the potential upside they actively sought and for which they paid.

The driving force for these fund substitutions is not the protection of contractholders—the only legitimate basis for substitution applications

⁵ Both HIMCO and Hartford Life are subsidiaries of Hartford Financial Services Group Inc.

⁶ *See n. 1, supra.*

under the 1940 Act—but rather is Hartford Life’s desire to sell its variable annuity business, which is in “runoff” (that is, no additional contracts are being sold or issued, and Hartford Life is actively seeking to eliminate the existing contracts from its books).⁷ Although Hartford Life has amended the Applications several times, it has not adequately addressed the issues raised here, nor has it provided a sufficient record on which the Commission could predicate approval of the Applications and, therefore, a hearing is necessary to determine whether the substitutions are entirely consistent with the protection of investors.⁸ Hartford Life’s desire to run-off and/or sell its variable contract business is not speculation, but fact.⁹ The proposed substitution is calculated to facilitate this effort by making

⁷ See Hartford Fin. Servs. Grp., “*The Hartford to Focus on Property and Casualty, Group Benefits and Mutual Funds Businesses*,” The Hartford Newsroom (Mar. 21, 2012), available at <https://newsroom.thehartford.com/releases/the-hartford-to-focus-on-property-and-casualty-group-benefits-and-mutual-funds-businesses> (noting that “the company is placing its individual Annuity business into runoff and is pursuing sales or other strategic alternatives for Individual Life, Woodbury Financial Services and Retirement Plans”).

⁸ AFIS’ counsel attempted to obtain insight into the Staff’s support for the Applications by making a Freedom of Information Act (“FOIA”) request for documents relating to discussions between the Staff and Hartford Life, the existence of which was disclosed when the Applications were first filed on April 21, 2015. The original FOIA request, made on September 9, 2015, was apparently lost. On February 17, 2016, the FOIA Office acknowledged receiving the second iteration of this request. Since then, the FOIA Office has sent emails on July 15th, August 4th, August 30th, September 23rd, November 1st, and December 21st, 2016, stating the FOIA Office is “still waiting for feedback from the SEC program office,” and projecting various response dates. To date no documents have been produced.

We join AFIS counsel’s request that these communications be produced—and made part of the record—as soon as possible, since they are likely directly relevant to issues that should be considered in a hearing. CRMC cannot fairly address these issues without access to all materials reflecting Commission or Staff considerations relevant to these discussions. The FOIA Offices’ months of inaction on the pending FOIA request violates the FOIA and Commission procedures, as well as a denial of due process.

⁹ See K. Chiglinsky & M. Monks, “*Hartford Said to Enlist JPMorgan to Sell Annuity Runoff Business*,” BLOOMBERG (Sept. 21, 2016), available at <https://www.bloomberg.com/news/articles/2016-09-21/hartford-said-to-enlist-jpmorgan-to-sell-annuity-runoff-business>; D. Bull & A. McNestrie, “*The Hartford Explores Sale of \$4.7bn VA Unit*,” THE INSURANCE INSIDER (Sept. 21, 2016), available at <http://www.insuranceinsider.com/the-hartford-explores-sale-of-4.7bn-va-unit>; The Hartford Press Release, “*The Hartford Announces Expanded Hedging Program that Effectively Eliminates Currency and Equity Market Risks on Japan Variable Annuity Block*” (Apr. 11, 2013), available at <https://newsroom.thehartford.com/releases/the-hartford-announces-expanded-hedging-program-that-effectively-eliminates-currency-and-equity-market-risks-on-japan-variable-annuity-block>. See also, The Hartford

- (i) Existing variable contracts less attractive to contractholders, reflecting Hartford Life's hope for a more accelerated rate of contract surrenders; and
- (ii) This line of business more "hedgeable," and therefore more attractive to a potential buyer.

Hartford Life sold investment guarantees that were advantageous to the contractholders purchasing them, but now Hartford Life wants to renege on the deals it struck with investors, and extricate itself from its obligation to live up to its original guarantees. Standing behind bargains voluntarily made is a core obligation inherent in investment agreements, like these variable contracts. And, even were that not true, attempting to invoke government action to abrogate valid current contracts is not a result to which Hartford Life is entitled. Hartford Life is conflicted with respect to the Applications, because it would increase its fee revenues if it succeeds in obtaining Commission approval to employ HIMCO to act as the investment adviser to the proposed replacement funds.

CRMC acknowledges that—in addition to its primary concern for the interests of contractholders, and especially those who chose AFIS Funds as their underlying investments—it also would be deprived of the fees to which it is contractually entitled from its management of the AFIS Funds, since those fees would effectively be confiscated by Hartford Life if the Commission granted the Applications. The fact that Commission action sought in the Applications would inflict harm on *both* contractholders and on the investment manager of certain underlying investments, however, serves to underscore—not diminish—the necessity for a Commission hearing before such a forced governmental abrogation of CRMC's existing contractual rights occurs.¹⁰

Financial Services Group, Inc., INVESTOR PRESENTATION (Nov. 2016), at pp. 5, 21, *available at* <https://ir.thehartford.com/~media/Files/T/Thehartford-IR/reports-and-presentations/hig-101-november-2016.pdf>.

¹⁰ CRMC's revenues are, of course, always subject to the exercise of contractholders' ability to move their underlying investments to other investments in the ordinary course of business; here, however, the Applicants' proposed substitutions are designed to benefit Hartford Life, and would disadvantage its contractholders by changing the character of contractholders' investment decisions without their consent, informed or otherwise.

David Grim, Director of the Commission's Division of Investment Management, recently called attention, on multiple occasions, to variable insurance contract buyout offers, which present similar issues to those inherent in the proposed investment substitution Hartford Life seeks here. In 2015 and 2016 speeches, Mr. Grim alerted the industry to the Staff's belief that these offers continue to warrant careful scrutiny, given the appropriate concern that these offers may not be beneficial for all, or even most, contractholders.¹¹ Mr. Grim also noted how difficult it is to quantify the value of a living benefit and, thus, the inherent difficulty in comparing contracts in exchange offers, or in assessing any such buyout offers.

In his most recent remarks, Mr. Grim drew attention to the recent SEC INVESTOR BULLETIN, "*Variable Annuities—Should You Accept a Buyout Offer?*,"¹² discussing the advantages and disadvantages associated with insurance company buyouts of variable insurance contracts. The INVESTOR BULLETIN properly warns investors that insurance companies make buyout offers to further their own best interests, not solely because such buyout offers are believed to be in contractholders' best interests. The BULLETIN also reminds investors that these buyout offers are optional, and contractholders are not obligated to accept them.

Mr. Grim's speeches and the recent INVESTOR BULLETIN reflect a higher level of Staff scrutiny for buyout offers of variable insurance contracts with guaranteed benefits by insurance company issuers. The Applications' proposed fund substitutions are analogous to these buyout offers, albeit more detrimental to contractholders:

First, they are mandatory—contractholders have no choice as they do in a buyout offer, and therefore the proposed substitutions are coercive; and

¹¹ D. Grim, "*Remarks to the ALI CLE 2016 Conference on Life Insurance Products*," Washington, DC (Nov. 4, 2016), available at <https://www.sec.gov/news/speech/grim-remarks-ali-cle-2016-conference-life-insurance-products.html>; and D. Grim, "*Remarks to the ALI CLE 2015 Conference on Life Insurance Company Products*," Washington, DC (Nov. 2, 2015), available at <https://www.sec.gov/news/speech/remarks-ali-cle-2015-conf-life-insurance-company-products-grim.html>.

¹² SEC Office of Investor Education and Advocacy, "Investor Bulletin: Variable Annuities—Should You Accept a Buyout Offer?" (July 14, 2016), available at https://www.sec.gov/oiea/investor-alerts-bulletins/ib_buyvarannuities.html.

Second, unlike buyout offers, Hartford Life is not offering any consideration or premium to account value in exchange for contractholders' agreement to relinquish funds they chose.

For these reasons, the proposed substitutions should be subject to an even higher level of scrutiny than that accorded buyout offers. Much like buyout offers, Hartford Life seeks to utilize the proposed substitutions to limit its exposure under the existing guaranteed benefits to which it freely committed, and on the basis of which it was able to sell hundreds of thousand of contracts. Given the Staff's concerns noted above, it is not readily apparent how granting the Applications would further the public interest, concomitantly calling into question how these proposed substitutions could satisfy the 1940 Act's rigorous standards for granting this type of exemptive relief.

As Mr. Grim noted, it is difficult to quantify the value of a living benefit and, thus, it is difficult to assess any offer for a buyout of one's contract. It follows, *a fortiori*, that contractholders would have similar or greater difficulties assessing the impact of the proposed substitution of their contract benefits. Hartford Life seeks Commission approval of the Applications, to endorse Hartford Life's effort to impose its own investment judgment in place of the investment decisions made (and continuing to be made) by its contractholders. Hartford Life's sole purpose in proposing these substitutions is not to benefit its contractholders, but to facilitate the implementation of its own strategic business plan.

The Applications—especially in the absence of a hearing—do not permit the Commission, on the current state of the record, to make a determination that these proposed substitutions are suitable for, much less in the best interests of, all Hartford Life's contractholders.

II. Factual Issues

CRMC requests a hearing on these Applications to determine a number of issues, including the following:

A. Providing an Adequate Basis for the Commission and Interested Parties to Assess the Effect of the Proposed Substitutions on Contractholders' Guarantees

As noted above, many Hartford contractholders purchased their variable annuity contracts with valuable investment guarantees, in the form of living income guarantees and death benefits. These guarantees

were priced based on the selection of actively managed mutual funds available to contractholders at the time of purchase. Contractholders' guarantees are considerably more valuable to them (and, conversely, more expensive for the insurer) when contractholders have access to actively-managed funds, and possess the freedom to seek multiple investment managers with different investment styles. This is so, because actively-managed funds offer greater potential "upside" than quantitative, index-type funds—actively-managed funds seek to outperform the market, not simply match it, and they pay guaranteed returns in excess of the highest value of the underlying funds. Contractholders paid a premium to purchase and maintain these guarantees, above and beyond what they paid for their contracts.

The proposed substitutions essentially rewrite each of these contractual guarantees, giving contractholders far less valuable and inexpensive guarantees covering primarily passively-managed, proprietary funds, without compensation reflecting the less valuable guarantee. Contractholders will thus be deprived of the full benefit of the bargain they entered into with Hartford Life when their contractual guarantees were originally purchased. Further, given the value of the guarantee to the contractholders, it is highly unlikely that contractholders would be able to opt in favor of purchasing similar guarantees from other insurers—either at a similar price, or at all.

The Applicants have not provided the Commission and its Staff with sufficient information to enable an adequate assessment of the effect of the proposed substitution on the investment performance guarantees contractholders purchased. At a hearing, we anticipate presenting expert testimony about the financial harm contractholders would suffer if the relief requested were granted, harm that is inconsistent with the Commission's mandate to protect investors. While CRMC did not issue these guarantees, its concern is for the AFIS shareholders who purchased a "package" consisting of a variable annuity contract and mutual fund shares—including AFIS Fund shares—and, the welfare of these contractholders are CRMC's primary concern.

One need not look beyond the actual iterations of the Applications for confirmation that the proposed substitutions are likely to have a negative impact on guarantees purchased by contractholders. The initial Applications contained a condition routinely found in other substitution applications—that

The [proposed] Substitution will not adversely affect any riders under the Contracts.

Presumably, however, Hartford Life realized that it could not satisfy this condition, and the Applicants revised the condition in the first amended and restated Applications, abandoning the initially proposed assurances that contractholders' existing guarantees would not be altered. As revised, this initial condition was weakened to provide:

The Substitution will not result in the loss of any Contract guarantees because, to the extent that an Existing Portfolio is a permissible investment option under a rider, its corresponding Replacement Portfolio is a permissible investment option under the rider.

In the second iteration of the amended and restated Applications, the Applicants simply removed the entire condition. The evolution of the treatment of this condition and its significance to contractholders are not self-evident, and would be required to be developed at a hearing.¹³

B. Provide a Basis for the Commission and Interested Parties Adequately to Assess the Impact the Proposed Substitutions would have on Various Contractholders' Existing Guarantees

The Applications state that, for each substitution of a current fund, between 56 and 67 different variable annuity contracts will be affected, each having thousands of investors. Because the numerous contracts listed in the Applications have materially different guarantees, before the Commission could approve individual substitutions, it must assess the differing degrees of impact on each type of guarantee, to enable it to make a finding whether the proposed substitutions are consistent with the protection of investors as contemplated and required by 1940 Act §26(c). The current state of the record makes it highly unlikely that the Staff has been able to perform this rigorous analysis and, given the conclusory statements in the Applications, neither have we.

Instead, the Applicants apparently intend for all to rely solely on their assertions. But, the 1940 Act's standards make it impossible for the Commission to approve the proposed substitution—even were the Commission otherwise disposed to grant the Applications—without a

¹³ An important benefit provided by a hearing would be to enable the Staff, the Commissioners, contractholders and all other interested parties, to question the Applicants about the meaning (and evolution) of the language contained in the proposals.

careful and complete examination of the underlying predicates for the Applicants' assertions. Moreover, given that these are individual and group deferred annuity contracts, the consequences of the proposed substitutions for the retirement plans of thousands of contractholders must also be examined. Unfortunately, the Staff and the Commission—not to mention adversely affected investors and interested parties—are prevented from performing this review in the absence of any factual analysis in the Applications.

C. Provide a Sufficient Basis for Determining if the Proposed Replacement Funds Are Materially Similar to the Current Funds

Many of the proposed replacement funds are quantitative, index-type funds, some of which have not yet begun operation. In contrast, CRMC actively manages AFIS Funds that have a long track record of consistently superior performance. Hartford Life asserts it is acting in contractholders' best interests by forcing upon them a conversion of their freely-chosen funds with brand new, unproven, funds that will generate substantial fees for HIMCO. Concurrent with its effort to sell its variable annuity business, Hartford Life seeks the Commission's permission to increase Hartford Life's business revenues (investment advisory fees) and decrease its costs (guarantees), but without any concomitant benefit for investors.

Many of the proposed replacement funds have objectives and strategies markedly dissimilar from the funds the Applicants propose to replace. A hearing is required to enable adversely affected investors and interested parties to assist the Commission in considering and understanding Hartford Life's proposal to replace three markedly distinct AFIS Funds with a single Hartford-advised fund. The three AFIS Funds Hartford Life proposes to replace each have different investment objectives, strategies, and portfolio securities. It is not possible—certainly not on the current state of the record—to conclude these existing funds possess substantially similar objectives, strategies and securities, all of which would be satisfied by a single Hartford-advised fund.

Hartford Life's proposed replacement funds have been registered over a year, but still have not attracted their first investment dollars, including seed money from Hartford Life and, therefore, lack any investment operations. Given this lack of any track record, Hartford Life in many instances compares the investment results of the AFIS Funds to a composite. This is an inappropriate and inapt comparison, and denies

investors information they are obligated to receive to make educated and informed investment decisions.

Moreover, many of the composites utilized consist of only a few accounts with very small balances, or contain non-fund accounts, all of which makes comparisons to the composites inapt. Only two of the composites presented as comparisons to AFIS' Funds have assets in excess of \$1 billion. Some of the accounts in the composites are not subject to the diversification requirements, tax restrictions and investment limitations imposed by the 1940 Act or Subchapter M of the Internal Revenue Code.¹⁴ Consequently, it is incumbent upon the Commission—were it inclined to approve the Applications—to determine whether, and to what extent, the claimed performance of the composite would have been less favorable had its component accounts been registered investment companies.

The comparisons supplied by Hartford Life—without any effort to test their basis and examine underlying assumptions—are currently insufficient to permit either the Commission or its Staff to find that the proposed replacement funds are similar to the current funds.

The Applications' proposed change in investment strategy—from mature, high-performing funds to newly-formed funds, and from active to passive management—and the significant differences in the objectives and strategies of each of the funds, amount to material changes in investment strategy for the AFIS Fund shareholders. Hartford Life is asking the Commission to permit Hartford Life to replace AFIS' investors' chosen investments with completely different investments, essentially substituting the Applicants' judgment for those made by the investors. Granting such relief would be inconsistent with the purposes fairly intended by the policy and provisions of the 1940 Act. Moreover, if the Commission were to grant Hartford Life's request, especially without a hearing, the Commission would effectively be facilitating—and putting its imprimatur on—this apparent breach by Hartford Life of its fiduciary obligations to its own contractholders.

III. Legal Issues

A. The Grant of the Proposed Applications Would Constitute an Unprecedented and Inappropriate Application of 1940 Act §26(c)

¹⁴ 26 U.S.C. §§851-855.

Over a number of years, insurance companies have obtained Commission exemptive relief for fund substitutions. But here, granting the Applications would provide Hartford Life with different, and more favorable, treatment from that previously accorded prior applicants—and in the absence of any evidentiary record providing a legally sufficient basis for doing so.

For example, earlier this year the Staff, pursuant to delegated authority, permitted Principal Life Insurance Co. to effect a fund substitution.¹⁵ The *Principal* order contains two conditions specifically designed to protect contractholders *that these Applications do not contain*:

- First, Principal represented that the proposed substitutions would have no adverse impact on existing guarantees; and
- Second, it represented that, for three years from the substitution date, neither it nor its affiliates would receive any direct or indirect benefits as a result of the substitution of the replacement funds.

The first condition is found in the vast majority of the orders upon which the Applications rely as precedent, and the second condition also appears in a significant number of the orders cited by Hartford Life as precedents. At a minimum, a hearing would enable the Staff, Commissioners, contractholders and interested parties to explore the absence of these two conditions in the Applications, the reasons for those omissions, and whether (as well as to what extent) the absence of those conditions adversely affects the interests of investors.

Contractholders who selected the AFIS Funds and purchased a guarantee would be harmed if their funds were replaced, because the guarantees they purchased long ago would be rendered less valuable, concomitantly meaning that they would have overpaid for those guarantees. As earlier noted, Hartford will receive advisory fees from the replacement funds. The two conditions normally included in applications

¹⁵ See 1940 Act Rel. Nos. 32030 (Mar. 17, 2016) (notice), available at <https://www.sec.gov/Archives/edgar/data/812797/999999999716020755/filename1.pdf>; and 32067 (Apr. 8, 2016) (order), available at <https://www.sec.gov/rules/ic/2016/ic-32067.pdf>.

of this nature, but absent here, would prevent contractholders from being harmed and would ameliorate Hartford's conflict of interest. We do not know the reasons (if any) that Hartford Life believed it was appropriate to omit these key conditions from its Applications, but we assume that Hartford Life could not make these representations (as is usually the case with applications of this nature) if it were required to do so. The omission of these two conditions is unambiguously inconsistent with the standard that must be met by applications of this nature—the protection of investors,. Because the Staff's delegated authority to issue notices on exemptive applications does *not* extend to matters that

[P]resent significant issues that have not been previously settled by the Commission or raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter,

the issuance of a notice without these two conditions that typically accompany such substitution applications clearly raises issues not previously settled by the Commission.¹⁶

B. Whether the Proposed Substitutions Are Consistent with the Policies Underlying the Provisions of the 1940 Act

In addition to the foregoing concerns, the Applications present no basis upon which the Commission could predicate a finding that the proposed substitutions are consistent with the policies underlying the 1940 Act outlined in §1(b).¹⁷ That section states, in relevant part, that

The national public interest and the interests of investors are adversely affected— . . .

(2) When investment companies are organized, operated and managed . . . in the interests of directors, officers, investment advisers, depositors, or other affiliated persons thereof,... rather than in the interest of all classes of such companies' security holders, . . . or

(6) When investment companies are reorganized, become inactive, or change the character of their business, or when

¹⁶ See 17 C.F.R. § 200.30-5(a)(1) (2016).

¹⁷ 15 U.S.C. §§80a-1(b)(2) and (6).

the control or management thereof is transferred, without the consent of their security holders.

The proposed substitutions are designed to benefit Hartford in its planned exit from the variable annuity business, to the disadvantage of contractholders, and change the character of contractholders' investments without their consent, in clear violation of the policies reflected in 1940 Act. §1(b).

It is significant in this context that, initially, substitutions were permitted merely upon notice to contractholders. Given the adverse impact on investors, in 1966 the SEC recommended that Congress, among other things, amend Investment Company Act §26 to give shareholders a voice in fund substitutions:

Accordingly, the Commission recommends that section 26 be amended to require that proposed substitutions may not occur without Commission approval. Not only would there be Commission scrutiny, *but interested shareholders would also have an opportunity to state their views about the proposed substitution.* Before issuing an order approving the substitution, the Commission would be required to find that the substitution 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 Act.¹⁸

The 1940 Act was subsequently amended in 1970 to add this provision, affording both shareholders and interested parties an opportunity to challenge substitution applications through the hearing process. The proposed substitutions are precisely the sort of action for which a hearing would be appropriate, given the significant factual and policy issues that have not been developed or addressed in the Applications.

C. The Benefits of Actively-Managed Funds and Guarantees Dwarf the Modest Cost Savings Hartford Life Suggests

Historically, a large part of the Staff's review of fund substitution applications has focused on determining whether contractholders would

¹⁸ See SEC, PUBLIC POLICY IMPLICATIONS OF INVESTMENT COMPANY GROWTH, H.R.Rep. No. 237, 89th Cong., 2d Sess. (1966) at p. 337 (emphasis supplied).

enjoy cost savings.¹⁹ Hartford Life asserts that its proposed fund substitutions will result in lower fund fees for contractholders. For most of the proposed substitutions, the claimed lower expense ratio would be the result of a distribution fee (Rule 12b-1²⁰) that would be 5 basis points (0.05%) lower than current fees, not the result of replacing higher management fees. In fact, expenses for the AFIS Funds are among the lowest in the industry.

AFIS has offered to create a share class with a 12b-1 fee that is 5 basis points lower than the current fee, or alternatively exchange contractholders into an existing share class of the Funds that has no 12b-1 fees. The latter approach would result in existing Fund fees *lower* than the proposed replacement fund fees. CRMC has repeatedly sought to negotiate with Hartford Life over issues like these, and avoid the need for a hearing. Unfortunately, Hartford Life has chosen not to accept any of CRMC's overtures, demonstrating that Hartford's concern is not for its contractholders, but rather is solely for its own bottom line.

IV. CRMC is an Interested Person Entitled to Request a hearing

To be an interested person entitled to request a hearing on an application under the 1940 Act, a requestor must state an ownership or other direct interest in the Applications at issue, or demonstrate that it is likely to suffer concrete harm if the Applications were granted.²¹ Here, if the Applications were granted, CRMC would suffer specific and material harm. Hartford Life contractholders own approximately \$7.3 billion in AFIS Fund shares, and the substitutions would affect 5% to 14% of each Fund's assets, as of November 30, 2016. In addition to the harm inflicted on AFIS Funds' shareholders, CRMC would lose its contractual benefit of advisory fees resulting from the effect of the proposed substitutions on

¹⁹ See, e.g., S. Roth, S. Krawczyk & D. Goldstein, "Reorganizing Insurance Company Separate Accounts Under Federal Securities Laws," 46 BUS. LAW. 537, at n. 142 and accompanying text (Feb. 1991).

²⁰ 17 C.F.R. §270.12b-1 (2016)

²¹ See, e.g., The Chase Manhattan Bank, N.A. and Chemical Bank, 1940 Act Rel. No. 23186 (May 14, 1998) (order), available at <http://www.funddemocracy.com/Chase%20Hearing%20Request%20Denial.htm>; Potomac Capital Investment Corp., 1940 Act Rel. No. 17238 (Nov. 28, 1989) (order); Shearson Loeb Rhoades Inc., 1940 Act Rel. Nos. 11834 and 11835 (June 26, 1981) (orders).

the AFIS Funds' assets.²² Therefore, CRMC would be harmed if the Applications were granted.

The Commission's 1940 Act Rule 0-5(c) provides that the Commission will order a hearing when it appears that a hearing is "necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion."²³ CRMC has raised material issues of fact and policy in this request that warrant a hearing, and its request raises issues of public interest and investor protection relevant to the Applications,²⁴ some of which the Commission has not previously considered.²⁵

Further, because CRMC has identified its "concrete interests" that would be impaired if the Applications were granted, an Agency decision not to grant a hearing would render CRMC aggrieved by the issuance of an order approving the Applications.²⁶ Indeed, any Commission order that effectively abrogated, modified, or impaired CRMC's existing contractual rights would result in an uncompensated "taking" of CRMC's valuable property, in violation of the Fifth Amendment to the U.S. Constitution.²⁷

Beyond Due Process concerns, the Administrative Procedure Act requires a hearing, to permit the development of the issues presented by

²² The substitutions also would result in fee increases for remaining shareholders in some AFIS Funds, as certain of the funds would lose the benefit of breakpoints in their advisory fees due to the impact of the proposed substitutions on the assets of such funds.

²³ 17 C.F.R. § 270.0-5(c) (2016).

²⁴ *See, e.g.*, *Pantepec International, Inc.*, 1940 Act Rel. No. 17908 (Dec. 20, 1990).

²⁵ *See, e.g.*, *Vanguard Index Funds et al.*, 1940 Act Rel. No. 24789 (Dec. 12, 2000).

²⁶ *See, e.g.*, *Warth v. Seldin* 422 U.S. 490, 508 (1975) (noting that the right to a hearing, and the ability to contest the denial of a hearing, extend to persons and entities, like CRMC, that have suffered an "injury in fact"—an invasion of a legally protected interest that is concrete and particularized); and *Fund Democracy, LLC v. SEC*, 278 F.3d 21, 28 (D.C. Cir. 2002) (similarly holding in the context of 1940 Act Rule 0-5(c)).

²⁷ *See, e.g.*, *Lynch v. U.S.*, 292 U.S. 571, 579 (1934) (holding that valid contracts are property); and *Cinega Gardens v. U.S.*, 331 F.3d 1319, 1334 (Fed. Cir. 2003) (holding that agreements between private parties give rise to protected property interests for Due Process Clause purposes).

the Applications, as well as to elucidate the appropriate standard for review of substitution applications.²⁸

Very truly yours,



Harvey L. Pitt

cc: Honorable Mary Jo White, Chair
Honorable Michael S. Piwowar, Commissioner
Honorable Kara M. Stein, Commissioner
David W. Grim, Dir., Div. of Inv. Mgmt.
Michael Downer, CRMC Sr. Vice-Pres., Sr. Counsel & Sec'y
Paul Roye, CRMC Sr. Vice-Pres., Sr. Counsel
Michael Triessl, CRMC Sr. Vice-Pres., Sr. Counsel
Lisa Proch, Hartford Life Vice-Pres., Ass't G.C.

Please find enclosed proof of service upon the Applicants.

²⁸ See, e.g., Administrative Procedure Act §555(b), 5 U.S.C. §555(b), which provides, in part,

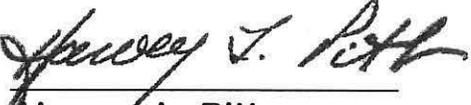
So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function.

As the language of the Act suggests, an “interested person” has a right to appear before an agency, qualified only by the absence of any impairment to the “orderly conduct of business” that might be caused by such a hearing. As discussed above, CRMC is likely to suffer material harm if the Applications were granted, and has alleged issues of fact or law relevant to the applications. Given the fact that contractholders’ representatives have also sought a hearing—and they are the most directly affected by the pendency of the Applications, it would be impossible to conclude that CRMC’s request for a hearing would, in any manner, adversely affect the orderly conduct of the Commission’s business

**CERTIFICATE OF SERVICE RE APPLICATION OF HARTFORD
LIFE FOR AN ORDER OF SUBSTITUTION UNDER THE 1940 ACT
SEC File Nos. 812-14446 & 812-14447**

I, Harvey L. Pitt, an attorney at law representing Capital Research and Management Company ("CRMC") in connection with the above-captioned Administrative Proceedings, hereby certify that, on January 3, 2017, I caused a true and correct copy of the foregoing Request for a Hearing filed on behalf of CRMC to be served, by hand delivery, on the following:

Lisa Proch
Vice-President, Ass't G.C.
Hartford Life Ins. Co.
One Hartford Plaza
P.O. Box Mail Stop-NP4-TRI
Hartford, CT 06155


Harvey L. Pitt