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January 23, 2020

BY HAND

Ms. Vanessa Countryman
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549

Re: Response to Hearing Request from Franklin Advisers Inc., et al Regarding the Application of Allianz Life Insurance Company of North America, et al. (collectively, the "Applicants") for an Order of Substitution (File No: 812-14722)

Dear Ms. Countryman,

On behalf of Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York (together, "Allianz"), named in the above-referenced substitution application (the "Application"),[1] we are submitting this response to a hearing request from outside counsel to Franklin Advisers, Inc., Franklin Mutual Advisers, LLC and Templeton Global Advisors Limited (collectively, the "Advisers") dated January 14, 2020.[2]

I. Executive Summary

Allianz respectfully requests that the U.S. Securities and Exchange Commission (the "Commission") deny the requested hearing and issue an order approving the Application for the following reasons:

- The Advisers are not "interested persons" for purposes of Rule 0-5 under the 1940 Act and therefore have no standing to request a hearing on the Application. Notably,

[1] Applicants filed an initial Application on December 7, 2016. Applicants amended and restated the Application on May 31, 2017, August 4, 2017, May 31, 2019, and August 13, 2019 in response to Staff comments. Unless otherwise indicated, all capitalized terms used herein have the same meaning as defined in the Application.

[2] Allianz also received a letter dated January 14, 2020 from outside counsel to the Independent Trustees of the Franklin Templeton Variable Insurance Products Trust ("FTVIPT") which did not request a hearing but stated that the Independent Trustees "support" the Advisers' hearing request. Certain points Allianz makes in parts III. and IV. of this letter are relevant to the Independent Trustees letter.

to our knowledge, no Contract owner and no other target fund adviser (other than the Advisers) requested a hearing on the Application.

- The Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The terms and conditions of the Application are fully consistent with the terms and conditions of other substitution applications that have been developed over the years by the Commission staff ("Staff") and previously approved by the Commission.

- Approval of the Application is supported by overwhelming precedent spanning decades. Notably, the Commission has issued nearly 200 substitution orders under Section 26(c) since the early 1980s.

- The replacement funds have lower expenses than the target funds. Specifically, the replacement funds' total net operating expenses will be lower than those of the corresponding target funds by 26 basis points, on average.

- The ability to effect substitutions is a fully-disclosed contractual right reserved by Allianz under the Contracts, and this contractual right serves as an important basis on which Allianz offered the Contract guarantees.

- The administrative record demonstrates that the Commission and its Staff have undertaken a thorough and independent analysis of the Application for over three (3) years. The review by the Commission and its Staff of the Application is arguably the most thorough review ever given to a substitution application.

- The Advisers' hearing request does not raise any new issues. All the issues in the request previously were raised by the Advisers[3] and considered by the Commission and its Staff, as evidenced by the administrative record, including the Application, as amended and restated in response to various comments from the Commission's staff, and the Commission's analysis provided in the notice of the Application issued on December 20, 2019.[4]

II. The Advisers Have No Standing to Request a Hearing

Rule 0-5 under the 1940 Act provides that only "interested persons" are entitled to request a hearing before issuance of an order of the Commission approving an application. The

[3] The Advisers previously submitted letters to the Commission objecting to the Application on May 10, 2017, June 8, 2017, August 22, 2017, and September 12, 2019 (the "Advisers' Prior Letters"). In response, Allianz submitted two letters, dated August 4, 2017 ("Allianz August 2017 Response") and September 24, 2019 ("Allianz September 2019 Response").

[4] *Allianz Life Insurance Company of North America, et al*, Investment Company Act Release No. 33721 (Dec. 20, 2019), File No. 812-14722 [hereinafter, "Notice of Application"].

Commission has consistently defined an "interested person" for purposes of Rule 0-5 as someone who has "an ownership or other direct interest in the applicants at issue or [that can] demonstrate that it is likely to be harmed by the granting of the application."[5] The Advisers have no ownership or other direct interest in the Applicants, and the only consequence that Advisers assert (or could assert) as being a "harm" that would afford them standing to request a hearing is the potential loss of advisory fee revenues if the proposed Substitutions occur. We respectfully submit that it would be inconsistent with the policy and provisions of the 1940 Act to deem this to be a "harm" that entitles the Advisers to request a hearing.

The Advisers' loss of fee revenues represents, if anything, a highly speculative and indirect type of harm to the Advisers. Any reduction in the Advisers' fee revenues would be only a very indirect consequence, because, among other things, it would be caused not only by any reduction in fund assets that results from the transactions that flow from any Section 26(c) approvals, but also on the further intervening cause of the agreements that the Advisers have entered into that make their fees dependent on the funds' net assets.

When entering into those agreements, the Advisers certainly understood the policies and provisions of the federal securities laws that largely preclude them from asserting a legal right to future advisory fee revenues. These policies are reflected, for example, in the legal requirements (a) that fund investment advisory agreements be subject to periodic re-approval by fund boards and always be terminable and (b) that fund shares be freely redeemable. The Advisers (and Allianz) certainly also understood that the shares purchased by Allianz's separate accounts would be freely redeemable (subject to the requirements of Section 26(c)). The Advisers knowingly entered into the agreements on this basis in the hopes of attracting assets, and they now hope that the Commission will exercise its authority in a way that effectively shelters them from risk of adverse consequences they knowingly assumed and that naturally flow from the contractual provisions that they voluntarily entered into, as well as from basic policies and provisions of federal securities law applicable to mutual funds and their advisers.

It would be inconsistent with the policies and provisions of the 1940 Act to interpret the possible reduction in investment advisory fees as being a harm that makes the Advisers "interested persons" within the meaning of Rule 0-5. We emphasize that it would go too far to say that any harm whatsoever—however indirect or speculative—is sufficient to afford standing to request a hearing. As noted by the Commission in the Notice of Application, "[t]here is no indication in the legislative history of section 26(c) that Congress was concerned with the impact of the substitution on the [target funds]."[6] Similarly, there is no indication that Section 26(c) was intended to protect fund advisers. This underscores the Advisers' lack of standing to request a hearing.

The Advisers cite four Commission orders in connection with the question of who is an "interested person" that has standing to request a hearing in the context of a Commission

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[5] *See* Chase Manhattan Bank and Chem. Bank, Rel. No. IC-23186 (May 14, 1998) (Order) (File No. 812-10136); *see also, e.g.*, Potomac Capital Inv. Corp. et al., Rel. No. IC-17238 (Nov. 28, 1989) (Order) (File No. 812-6035).

[6] Notice of Application, p. 15.

proceeding. Two of these orders (those issued by the Commission as Release No. IC-11834 (June 26, 1981) and Release No. IC-11835 (June 26, 1981)) are wholly inapposite, as they related to the definition of an "interested person" under Section 2(a)(19) of the 1940 Act. That definition governs the question of whether one person is, for various purposes under the 1940 Act, an interested person of **another person** of a type specified in the definition and has no relevance to whether a person is "interested" in a **proceeding** before the Commission in a way that entitles that person to request a hearing. Nor did those orders address the subject of hearings at all, other than to note that no hearing requests had been made.

In the other two orders cited by the Advisers (those issued by the Commission as Release No. IC-23186 (May 14, 1998) and Release No. IC-17238 (Nov. 28, 1989)), the Commission denied requests for hearings, after concluding that the requesting parties were **not interested persons** for that purpose. Nor do those orders otherwise refer to any scenario where a hearing requestor's legitimate interest even remotely resembles the interest asserted by the Advisers in their novel argument. Accordingly, these orders undermine, rather than support the Advisers' claim of standing to request a hearing.

III. Key Points Related to the Facts of the Application

The Advisers' hearing request contains numerous mischaracterizations of the facts contained in the Application and the effects of the proposed Substitutions. Allianz does not intend to discuss each of these mischaracterizations here; Allianz has previously responded[7] to the Advisers' mischaracterizations in the Advisers' Prior Letters. However, Allianz does wish to highlight the following points.

Benefits to Contract Owners. As reflected in the Application, the management fee for each replacement fund is the same or lower than the corresponding target fund.[8] As the Commission knows, fund management fees cannot be increased without shareholder approval. Accordingly, the benefits of lower management fees are expected to persist independent of the 2-year contractual expense-cap condition in the Application.

In addition, the total net operating expenses of each replacement fund are lower than those of each corresponding target fund. Notably, the replacement funds' total net operating expenses will be lower than those of the corresponding target funds by:

- ***10 or more basis points,*** for 11 out of 13 Substitutions; and
- ***26 basis points***, on average.[9]

[7] See, Allianz August 2017 Response and Allianz September 2019 Response.

[8] For Substitution 7, the target fund is a fund of funds, and the combined management fee and 12b-1 fee for the replacement fund is lower than the combined management fee, 12b-1 fee, and estimated acquired fund management and 12b-1 fees for the corresponding target fund.

[9] Expense reductions are based on a comparison of fund expenses as reflected in Appendix C of the Application, and pro-forma fund expenses if the Substitutions are approved as reflected in Allianz's September 2019 Response.

The Substitutions to replacement funds with lower fees offers substantial benefits to Allianz's Contract owners and are essential to keep its products competitive in the marketplace.

Other benefits to Contract owners reflected in the Application include the facts that: (i) many of the Substitutions will offer improved portfolio manager selection afforded by the replacement funds' manager of managers order; (ii) the replacement funds have favorable historical performance relative to the corresponding target funds; and (iii) Allianz will bear all the costs and expenses of the Substitutions.

Replacement Funds Sub-advised by Unaffiliated Managers. The Application seeks to replace five target funds that are series of FTVIPT ("Franklin Funds"). The Advisers' hearing request complains that the replacement funds are managed by an affiliate of Allianz.[10] The Advisers' complaint, however, fails to mention that the replacement funds in four out of five Substitutions involving the Franklin Funds are sub-advised by either BlackRock Investment Management, LLC, or Fidelity Institutional Asset Management (FIAM LLC), neither of which are affiliated with Allianz.

Contracts Offer a Wide Variety of Investment Options. As stated in the Application, after the Substitutions are effected, the investment options available under the Contracts will continue to represent a wide variety of asset categories, including Short-Term Bonds, Specialty, Cash Equivalent, Intermediate-Term Bonds, International Equity, Global Equity, Large Cap Value, Large Cap Growth, Large Cap Blend, Mid Cap, Small Cap, and Balanced. Accordingly, Contract owners will continue to have access to a wide variety of investment options to pursue investment strategies consistent with their investment objective.

Contracts Offer a Wide Variety of Investment Managers. As stated in the Application, the investment options available under the Contracts are managed and/or subadvised by a wide variety of affiliated and unaffiliated asset managers. Of the ***73*** investment options available through the Separate Accounts, ***32*** are managed by asset managers that are ***not affiliates*** of Allianz, and an additional ***17*** are subadvised by asset managers that are ***not affiliates*** of Allianz.

No Change in Contractual Rights and Obligations. The ability to effect Substitutions is a right reserved by Allianz under the Contracts. Accordingly, the Substitutions would not result in "unilateral contract amendments" or "override" Contract owner investment decisions, as asserted by the Advisers.[11] To the contrary, Allianz unequivocally stands behind its obligations under the Contracts. As stated in the Application, the proposed Substitutions are consistent with the terms of the Contracts, and will not alter Allianz's rights or obligations under the Contracts.

[10] Advisers hearing request, p. 2.

[11] Advisers hearing request, p. 2.

IV. Key Points Related to Applicable Law

In addition to mischaracterizing numerous facts, the Advisers' hearing request also mischaracterizes applicable law[12] as relevant to the review of the Application by the Commission and its Staff. Allianz has previously responded[13] to the Advisers' mischaracterizations in the Advisers' Prior Letters. However, Allianz does wish to highlight the following points.

The Substitutions Meet the Standards of Section 26(c). The Advisers demand that, in order to satisfy Section 26(c), the Commission must review and evaluate a Monte Carlo-type analysis that predicts the effect of the Substitutions on the value of various guarantees under the Contracts.[14] The Advisers' demand to engage in such speculative analysis finds no support in the legislative history of Section 26(c) or in the Commission's consistent administration of Section 26(c) for over four decades.[15]

As noted by the Commission in the Notice of Application, calculating how substitutions would affect the value of variable insurance contract guarantees would require reliance on "numerous assumptions and other factors, including estimates of the future performance of the funds involved over varying time frames, and the impact of future performance on the benefit base used to set the insurance guarantees."[16] In addition, as stated in Allianz's August 4, 2017 letter, "many variable annuity contracts and riders include both the opportunity to increase the guarantee levels due to favorable investment performance, and protection against market declines because the levels of established guarantees are not reduced by adverse performance. Accordingly, even if the Advisers were able to predict the future performance of an investment option, it would not be possible to make a universal statement regarding the effect of a proposed substitution on the value of guarantees under the Contracts."[17]

Nevertheless, the Commission and its Staff have developed and implemented conditions in support of investor protection that require applicants to represent that at the time of the proposed substitutions, the contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics. Allianz respectfully submits that the Commission's and its Staff's historical standards of review and conditions for approval of substitution applications reflect an appropriate administration of Section 26(c).

Administrative Record Satisfies Applicable Standards. The Advisers assert that the Notice of Application issued by the Commission relies on "Allianz's unsupported statements"

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[12] This includes the Advisers' false assertions (without citing any authority – because no such authority exists), that Section 26(c) requires a "best interest" analysis. It plainly does not.

[13] See, Allianz August 2017 Response and Allianz September 2019 Response.

[14] Advisers hearing request, p. 11.

[15] Notably, the Advisers have not objected to prior substitution applications where they managed the replacement funds.

[16] Notice of Application, p. 13.

[17] Allianz August 4, 2017 letter, p. 5.

and does not reflect "independent analysis" by the Commission.[18] These assertions have no merit and are not supported by the administrative record of the Application.

First, the Application includes a comparison of each target fund's and replacement fund's investment objectives, principal investment strategies, principal risks, fees, and performance record. This information was sourced from each target fund's and replacement fund's publicly-filed registration statement and/or shareholder reports. The Commission and its Staff have required Allianz to provide this information and make representations regarding these substantive factors as a basis for granting the requested Substitutions. These substantive factors have developed over the decades as a result of the Commission's and Staff's independent analysis of the factual basis for approving substitution applications. Second, the administrative record includes the Staff's comments on the Application, and Allianz's revisions to the Application in response thereto. Third, the substance of the Application, including all of the terms and conditions of the Application, reflect the Staff's consistent historical administration of substitution applications based on the Staff's cumulative experience developed in reviewing almost 200 substitution applications over the past several decades. Fourth, the administrative record reflects the Commission's consideration of the issues raised by the Advisers in the Advisers' Prior Letters. Accordingly, the administrative record reflects that both the Commission and its Staff have invested substantial time and resources and engaged in a rigorous review of the issues and application of the standards for approval under Section 26(c), consistent with the Congressional intent of Section 26(c) and the legal rights and benefits of substitutions.

Given the administrative record here, the *Susquehanna* case cited by the Advisers[19] is entirely inapposite. In view of the obvious resources that the Commission and its Staff have committed to developing, evaluating, and applying conditions for approval of substitution applications (including the Application), the Advisers' reference to *Susquehanna* is frivolous. Notably, in view of the similarities among the terms and conditions of substitution applications, by asserting that the Commission has not satisfied the standards of the Administrative Procedures Act with respect to the Application, the Advisers effectively seek to call into question the validity of all 200 substitution applications previously approved by the Commission.

* * *

Allianz appreciates the Commission's and the Staff's thorough review and consideration of the Application consistent with the historical administration of Section 26(c).

As stated in the Application, Allianz submits that each of the proposed Substitutions is consistent with the protection of investors and the policy and provisions of the 1940 Act and supported by applicable precedent. Allianz respectfully requests that the Commission deny the requested hearing and issue an order approving the Application.

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[18] Advisers hearing request, p. 5.

[19] Advisers hearing request, pp. 4-5.

Please direct any additional questions concerning the Application to the undersigned at 202-965-8139.

Sincerely,

Chip Lunde

Chip Lunde
Carlton Fields, P.A.

cc: The Hon. Jay Clayton, Chairman
The Hon. Robert J. Jackson Jr., Commissioner
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
Dalia Blass, Director, Division of Investment Management
Paul G. Cellupica, Deputy Director and Chief Counsel, Division of Investment Management
Rick A. Fleming, Office of the Investor Advocate
Erik T. Nelson, Senior Securities Counsel, Allianz Life Insurance Company of North America
Alison Bauer, Franklin Templeton Investments
Kevin Kirchoff, Franklin Templeton Investments
Thomas S. Harman, Morgan, Lewis & Bockius LLP

CERTIFICATE OF SERVICE

I, Chip Lunde, an attorney at law representing Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York as applicants for an order of approval and exemption from the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended, File No. 812-14722, hereby certify that, on January 23, 2020, I caused a true and correct copy of the foregoing response to the request for a hearing by Franklin Advisers, Inc., Franklin Mutual Advisers, LLC and Templeton Global Advisors Limited dated January 14, 2020, to be served by hand delivery to:

Thomas S. Harman
Partner
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave. NW
Washington, DC 20004

Chip Lunde

Chip Lunde, Esq.
Carlton Fields, P.A.