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July 31, 2020

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

Re: Written Statement Submitted Pursuant to the Order Granting Hearing and Scheduling Filing of Statements, *In the Matter of* Allianz Life Insurance Co. of North America, *et al.*, File No. 812-14722, Investment Company Act Release No. 33916 (July 1, 2020) (the "Order")

Dear Ms. Countryman:

Pursuant to the above-referenced Order, Franklin Advisers, Inc., Franklin Mutual Advisers, LLC and Templeton Global Advisors Limited (together, the "Advisers") submit this Written Statement in opposition to the Fourth Amended and Restated Application (the "Application") of Allianz Life Insurance Co. of North America, *et al*. (collectively, the "Insurer"). In its Application, the Insurer seeks an order of approval under Section 26(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), to replace thirteen funds underlying variable insurance contracts.[1] Five funds advised by the Advisers are the target of substitution in the Application.[2]

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[1] Fourth Amended and Restated Application for an Order of Approval Pursuant to Section 26(c) of the Investment Company Act of 1940 and an Order of Exemption Pursuant to Section 17(b) of the Act from Section 17(a) of the Act, Allianz Life Insurance Co. of North America, *et al*., File No. 812-14722 (Aug. 13, 2019), *available at* https://www.sec.gov/Archives/edgar/data/72499/000007249919000061/substappamend40oipaaug2019.htm.

[2] The Templeton Growth VIP Fund, Franklin Allocation VIP Fund, Franklin Income VIP Fund, Franklin Strategic Income VIP Fund, and Franklin Mutual Shares VIP Fund. Under Rule 0-5 of the 1940 Act, the Advisers are interested persons with respect to the funds that they advise. The Advisers believe that the Commission's decision to grant a hearing necessarily concluded that the Advisers are "interested persons" for purposes of contesting the Application. Should the Insurer challenge that the Advisers have standing in its initial statement, the Advisers will address those points in their response. Further, in accordance with the terminology used in the Application, the Adviser-advised funds are hereafter referred to as "Target Funds" and the proposed replacement funds for such Target Funds will be hereafter referred to as "Destination Funds."

Section 26(c) of the 1940 Act prohibits a depositor from substituting underlying mutual funds in variable contract insurance separate accounts unless the Securities and Exchange Commission (the "Commission") has approved the substitutions.[3] For at least 20 years following the adoption of amendments to Section 26(c) in 1970, the Commission largely approved fund substitutions involving emergencies or unforeseen circumstances, such as the sudden closure of a fund offered as an investment option.[4] This approval process was consistent with the structure of these products because, at the variable contract-level, an insurance company merely acts as depositor with no fiduciary duty, nor is there any investment adviser or board of trustees to ensure that shareholders are protected. More recently, however, substitutions have occurred resulting from dramatically different circumstances having nothing to do with the underlying funds. These substitutions have instead been driven by the insurance industry's desire to reduce expenses, as contract benefits have proved more expensive than previously predicted.[5] Instead of replacing one fund or a few funds that encountered some unforeseeable difficulty, these substitutions have eliminated *entire slates* of funds, depriving investors of their original investment choices. In the

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3 15 U.S. Code § 80a–26(c). Variable contracts include variable annuities and variable life insurance policies. A variable annuity is a type of insurance contract the value of which rises and falls with the value of the mutual funds selected by the contract holder in connection with the purchase of the contract. Many variable annuities offer valuable benefits for an additional fee, such as income floors or stepped-up death benefits. Investors often select the contract, additional benefits, and mutual funds with the help of a financial professional. *See* "Variable Annuities: What You Should Know", https://www.sec.gov/investor/pubs/sec-guide-to-variable-annuities.pdf. A variable life insurance policy is intended to meet certain insurance needs, investment goals, and tax planning objectives. It is a policy that pays a specified amount upon an investor's death. It also has a cash value that varies according to the amount of premiums paid, the policy's fees and expenses, and the performance of a menu of investment options—typically mutual funds—offered under the policy. *See* "Investor Bulletin: Variable Life Insurance", Oct. 30, 2018, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_varlifeinsurance.

4 *See, e.g.,* Nationwide Life Ins. Co., Investment Company Act Release No. 17178 (Oct. 18, 1989) (order) (board of five funds managed by adviser unaffiliated with insurer voted to cease sale of shares and all operations of the funds due to their small size and high level of expenses; insurer substituted shares of five new funds); Bankers Nat'l Life Ins. Co., Investment Company Act Release No. 15827 (June 25, 1987) (order) (insurer substituted shares of a mortgage-backed securities fund that met the tax diversification requirements for those of a government securities fund that could not); Nationwide Life Ins. Co., Investment Company Act Release No. 13915 (May 1, 1984) (order) (owners voted to liquidate money market fund); Hartford Variable Annuity Life Ins. Co., Investment Company Act Release No. 13209 (May 2, 1983) (order) (three funds substituted for three virtually identical funds to avoid adverse tax treatment); Educators Life Ins. Co., Investment Company Act Release No. 10433 (Oct. 12, 1978) (order) (funds substituted in light of dissolution plan).

5 P. Roye, *"Understanding the Securities Products of Insurance Companies,"* New York, N.Y. (Jan. 10, 2002) *available at* https://www.sec.gov/news/speech/spch533.htm ("While in the past, these applications were mainly filed by insurance companies that were facing unforeseen circumstances caused by changes in the underlying fund, we are now seeing quite a few applications filed in connection with changes in the insurance company's strategic business plans. Accordingly, our analysis of these applications has evolved as well, in response to the new facts and circumstances reflected in these applications…[w]e look carefully at each application to determine the overall impact the substitution will have on contractowners."). Mr. Roye was the Director of the Division of Investment Management in 2002. *See also* Allianz's Form 10-K for 2015, noting that "Over the past years, Allianz Group and its operating entities have developed operational contingency plans for various crisis scenarios. We continue to conduct scenario analysis on a regular basis to bolster our financial and operational resilience to strong shock scenarios. In addition, we continue to optimize our product design and pricing in the Life/Health business segment with respect to guarantees and surrender conditions.", *available at* https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/investor-relations/en/results-reports/annual-report/ar2015/ar2015_group.pdf.

absence of any party with a fiduciary duty, such as a board of trustees or an investment adviser, these recent substitutions have exposed contract holders to the insurance companies' self-interest with only the requirements of Section 26(c) as a safeguard. These substitutions have been controversial, as demonstrated by the recent withdrawal, after industry and contract holder input, of a proposed slate-clearing substitution by Hartford Life Insurance Company ("Hartford").[6]

These significant and negative consequences to investors make it critical that Section 26(c)'s requirement that the Commission shall approve substitutions only "if the evidence establishes that [such substitution] is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title" is applied strictly.[7] Pursuant to the Commission's own standards and judicial requirements, the Commission may not issue an order approving an application when the evidentiary record lacks the necessary analysis upon which its decision can be based.[8] Under these standards, the Insurer's Application should be denied as it is facially deficient and has not provided sufficient information or analysis that would enable the Commission to determine if the proposed substitutions are "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."[9]

The Application seeks to involuntarily and materially alter the contracts that the investors originally purchased; would override the investment decisions of thousands of contract holders (decisions made potentially over 25 years ago) as to which variable contracts to purchase and which mutual fund(s) to choose as investment options; and could affect the benefits, rights and privileges of the variable contracts the contract holders chose. The Commission should not facilitate these unilateral contract amendments where there is no analysis of the effect on the contract holder's investment decisions.

Without sufficient evidence to justify the Commission's action to take away the choices of the contract holders, the Application should be denied. **The Insurer's Application fails to answer at least seven critical questions on the effect of the proposed substitutions on contract holders, as listed and discussed in Section II.C below**.[10] These critical questions look deeper

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6 *See* Order Permitting Withdrawal of Application, In the Matter of Harford Life Insurance Company, *et al.*, File No. 812-14446, Investment Company Act Release No. 32569 [Investment Company Act Release No. 32569] (March 23, 2017).

7 15 U.S. Code § 80a–26(c).

8 *See* Susquehanna Int'l Grp., LLP v. SEC, 866 F.3d 442, 447 (D.C. Cir. 2017) (stating that the Commission is required to make findings and determinations and "not merely accept those made by" the applicant); Order Disapproving Proposed Rule Change Concerning The Options Clearing Corporation's Capital Plan, Exchange Act Release No. 85121 (Feb. 13, 2019) [hereinafter referred to as Exchange Act Release No. 85121] (citing *Susquehanna*); Order Disapproving Proposed Rule Change to Introduce a Liquidity Provider Protection Delay Mechanism on EDGA, Exchange Act Release No. 88261 (Feb. 21, 2020) [hereinafter referred to as Exchange Act Release No. 88261] (citing *Susquehanna*); *also* Section I *infra* (discussing the standard required in *Susquehanna* and applied by the Commission in its administrative orders).

9 15 U.S. Code § 80a–26(c).

10 It is particularly important for the Commission to obtain and analyze the missing data when determining if the proposed substitutions truly are "consistent with the protection of investors" as required by Section 26(c) because once the assets are transferred from the Target Funds to the Destination Funds, the remaining shareholders in the Target Funds could be harmed. The Advisers offer breakpoints to many of the funds they advise. The loss of

than the shallow justifications offered by the Insurer and would enable the Commission to determine whether the Application meets Section 26(c)'s required standard. Without this data and any analysis of the impact of the proposed substitutions, it is impossible for the Commission to determine whether the proposed substitutions are "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."[11] What is more, in the absence of such evidence and analysis, the Commission should not endorse an action that would take away the contract holders' choices.

Further, where evidence of meaningful investor benefits is lacking, investors should be offered *more* choice, rather than a substitution that *takes away* investor choice. Instead of granting the proposed substitutions, the Commission should encourage the Insurer to follow the customary method by which new funds are marketed to variable contract holders: offering the funds as an additional investment option from which contract holders can choose. This would give contract holders the freedom to choose for themselves whether to modify the investment choices that they previously bargained for based on their individual circumstances.

Section I of this Written Statement discusses the required standard of review by the Commission prior to issuing an order pursuant to Section 26(c). Section II analyzes the facial deficiencies of the Application and elaborates on the analysis that will be required of the Insurer prior to any order being issued. We note that once the Insurer provides the relevant data and analysis thereof to make the Application facially sufficient, the Commission must then evaluate it and not simply accept it. Whether that evaluation is through testing performed by the Department of Economic and Risk Analysis – Office of Asset Management ("DERA") or otherwise, Federal Courts have required government agencies to evaluate the information upon which they propose to make findings and determinations.[12]

I. Standard of Review and Necessary Evidentiary Record: The Commission Must Conduct an Independent Analysis and Not Place Unquestioning Reliance on the Application

Section 26(c) is different from all other 1940 Act exemptive provisions in that it permits the Commission to unilaterally modify material investor decisions after-the-fact. Under Section 26(c), the Commission may issue an order approving a fund substitution for variable contracts only "if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."[13] Section 26(c) thus explicitly requires an evidentiary record to be established before the Commission issues an order, and such an exemption should only be granted where affected investors, including variable contract holders and underlying fund investors, would *demonstrably benefit* from after-the-fact modifications to

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assets may lower a fund's assets to the point that it is no longer eligible for its current breakpoint. For example, the remaining shareholders in the Templeton Growth VIP Fund are likely to start having to pay an additional 0.03% in management fees due to the loss of assets currently receiving a breakpoint.

11 15 U.S. Code § 80a–26(c).

12 *See Susquehanna*, 866 F.3d 442.

13 15 U.S. Code § 80a–26(c).

their investments.[14] Federal Courts and Commission releases have established a requisite standard of review and evidentiary record necessary before the Commission can issue a requested order. The D.C. Circuit's opinion in *Susquehanna* as well as two subsequent Commission orders, Exchange Act Release No. 85121 and Exchange Act Release No. 88261, articulate the requisite standard of review and evidentiary record.

Susquehanna involved the review of a Commission order under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Exchange Act").[15] Similar to Section 26(c), Section 19(b)(2) requires that before issuing an order the Commission make findings "consistent with the requirements of this title and the rules and regulations issued under this title . . . ."[16] These findings must be supported by an evidentiary record, similar to Section 26(c).[17] The Commission initially issued an approval order pursuant to Section 19(b)(2), which was subsequently challenged on appeal to the D.C. Circuit.[18] Upon review of the administrative record, the D.C. Circuit in *Susquehanna* found that the Commission placed "unquestioning reliance" on the applicant's arguments.[19] The D.C. Circuit stated that the Commission is required to make findings and determinations and "not merely accept those made by" the applicant.[20] Finding that the record lacked any independent analysis by the Commission or any critical review of the arguments

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14 Further, the Commission must ensure that any agency action is not arbitrary and capricious, pursuant to the Administrative Procedure Act ("APA"). 5 U.S.C. § 706(2)(A). Under Section 43(a) of the 1940 Act, "any person or aggrieved party," such as the Advisers, can challenge a Commission order in Federal Court. The APA will govern any review pursuant to Section 43(a), and the Federal Court will be required to set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). In applying the arbitrary-and-capricious standard of review, the Commission must demonstrate to the Federal Court that it has "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co. (State Farm), 463 U.S. 29, 43 (1983) (internal quotation marks omitted); s*ee also* NYSE v. SEC, Slip No. 19-1042 (D.C. Cir. June 16, 2020). Under the APA, if the Commission issued an order without analyzing the relevant data or obtaining an independent review, such agency action would likely be found "arbitrary and capricious." *See* NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (emphasizing the need for the Commission to make an independent finding and support its finding with evidence, and noting that the court does "not defer to the agency's conclusory or unsupported suppositions").

15 *Susquehanna*, 866 F.3d at 443-45. *Susquehanna* involved a court review of a rule change approved by the Commission for the Options Clearing Corporation (the "OCC") to increase its capital reserves. As part of its capital reserve plan, clearing members, who previously received all excess fees paid under the prior structure as refunds, would now only receive half of those excess fees as the other half would be paid as dividends, which are only paid to shareholders. S*ee also* Order Approving Proposed Rule Change Concerning The Options Clearing Corporation's Capital Plan, Exchange Act Release No. 77112 (Feb. 11, 2016).

16 15 U.S.C. § 78s(b)(2)(C)(i).

17 *Susquehanna*, 866 F.3d at 446 (remanding the case back to the Commission in part because "the SEC's Order reflects little or no evidence of the basis for the . . . determinations — and few indications that the SEC even knew what that evidence was").

18 *Id.* at 444-45.

19 *Id.* at 447.

20 *Id.*

submitted to the Commission, the D.C. Circuit remanded the case to the Commission to properly evaluate the facts underlying the order.[21]

Upon remand, the Commission issued an order revoking its previously issued order due to the lack of evidence in the record and the accompanying conclusory determinations.[22] The Commission then sought to establish the necessary evidentiary record to support any order by publishing a request for public comment[23] and then instituting proceedings after receipt of comments.[24] When the Commission ultimately did issue an order, the order contained critical analysis of the applicant's representations and made four distinct findings under each Exchange Act provision and rule thereunder implicated by the issuance of the order.[25] As we will demonstrate in Section II, the Application is replete with conclusory statements and lacks evidence that the fund substitutions – which involve different insurance contracts with different features – are consistent with the protection of investors.

Since *Susquehanna,* the Commission has reiterated the evidentiary record necessary to issue an order under similar standards. In issuing an order disapproving a proposed rule change requested by Cboe EDGA Exchange, Inc., for example, the Commission emphasized that its own Rules of Practice require that "the description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding" and that "mere assertion that the proposed rule change is consistent with [the applicable] requirements . . . is not sufficient."[26] The Commission further noted that "unquestioning reliance" on an applicant's representations is not sufficient to justify approval.[27] Finding that the application did not, in part, meet its burden in demonstrating how the proposed changes would protect investors and the public

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[21] *Id.* at 447 & 451.

[22] *See* Exchange Act Release No. 85121, *supra* note 8 ("We recognize that the Commission previously approved this proposed rule change. But we did so, in significant part, in reliance upon OCC's representations . . . . [T]he Commission must critically evaluate the representations made and the conclusions drawn by OCC. After conducting such an analysis on remand, and after giving the parties the opportunity to submit additional materials to the Commission, we have determined that OCC has failed to meet its burden . . . .").

[23] Notice of Filing of Proposed Rule Change Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 86725 (Aug. 21, 2019).

[24] Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 87603 (Nov. 22, 2019).

[25] *See* Order Approving Proposed Rule Change, as modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 88029 (Jan. 24, 2020) (addressing with specificity the effects under Sections 17A(b)(3)(F) and 17A(b)(3)(D) of the Exchange Act, as well as Rules 17Ad-22(e)(2) and 17Ad-22(e)(15) thereunder).

[26] Exchange Act Release No. 88261, *supra* note 8 (citing Rule 700(b)(3) with regard to Section 19(b)(2) processes).

[27] *Id.* (citing *Susquehanna*).

interest, as is similarly required under Section 26(c), the Commission did not approve the application.[28]

II. Facial Deficiencies of the Application and Required Analysis to Make the Application Sufficient

Pursuant to *Susquehanna* and the Commission's own standards, an order cannot issue here. The Application and the evidentiary record are facially deficient and lack the requisite data and analysis necessary for the Commission to conclude that the proposed substitutions are consistent with the protection of investors. As in *Susquehanna*, the record consists solely of the Insurer's representations and conclusory statements with little or no information that would allow the Commission to make independent findings or perform any critical review. Therefore, as the Commission has previously stated, "relying on [the applicant's] representations, without more, is insufficient," and an order cannot issue.[29]

A. The Benefits Cited in the Application Primarily Benefit the Insurer, Not Investors

Although Section 26(c) requires that the evidentiary record be sufficient to support a Commission determination that the substitutions are "consistent with the protection of investors," the "benefits" cited in the Application fail to support such a determination. Of the four claimed benefits in the Application, three provide a benefit only to the Insurer and no benefit at all to investors. As discussed in Section II.B below, the fourth benefit may provide some, little or no benefit, but it is impossible for the Commission to evaluate the extent of the benefit as the Insurer has provided insufficient data and no analysis in its Application.

1. More Efficient Contract Administration Does Not Benefit Investors

The Insurer's first argument is that the substitutions will create more efficient contract administration. The record is void of any support for how the proposed order's effect on contract administration may actually benefit investors. Unlike fund expenses, which if reduced will lower the fund's expense ratio paid by shareholders, expenses relating to variable contracts are fixed and internal to the insurance company. This proposed "benefit," therefore, will flow solely to the Insurer, as reducing administrative expenses will allow the Insurer to reduce costs and increase its profits. The Application offers no explanation as to how streamlined administration processes will benefit investors or why this argument is consistent with the protection of investors.

Additionally, although contract administration may be more efficient for the Insurer, the proposed substitutions will create additional burdens for all other parties involved. Many contract holders selected underlying fund options only after discussions with their financial adviser and careful consideration of his or her individual financial situation and goals and risk preferences. This consideration resulted in the selection of a variable contract with particular features and a carefully chosen combination of funds with investment strategies that complimented the variable

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28 *Id.*

29 Exchange Act Release No. 85121, *supra* note 8.

contract and its features. If the Commission orders the proposed substitutions and inserts funds that are materially different from the Target Funds, as discussed in Section II.C.2 below, contract holders would likely need to repeat these discussions with their financial adviser, thus increasing expenses and burdens not only for the financial adviser but for the contract holder as well.[30] Importantly, the Insurer is not acting as a fiduciary in seeking to re-design its product, as it is merely the depositor of assets in its separate accounts; as such, the contract holder must rely on their financial adviser, or undertake their own analysis, in response to being deprived of their carefully-tailored investment choices. Unfortunately, there is no guarantee that these discussions will occur, or that any of the Destination Funds or any combination of them are suitable for an investor's situation, needs, or are complementary to his or her current variable contract. And if such discussions did occur, the financial adviser, concerned with the Insurer's unilateral decision to not honor the investor's decision and the resulting lack of trust in the Insurer, might advise the investor that it is in their best interest to make an exchange into a different insurer's variable contract, which would incur additional costs and disruptions to the investor. Because the Insurer fails to address these collateral costs and implications that may be forced on the investor by the Insurer's self-interest, the Application is facially deficient.

2. The Application Fails to Show How Reducing Fund Manager Selection Benefits Investors

More concerning for the investors, however, is that the Insurer argues that replacing third-party Target Funds with Destination Funds advised by captive, Insurer-affiliated advisers will result in "improved fund manager selection." While these substitutions will certainly benefit the Insurer in the form of increased fund advisory fees, the Insurer does not explain how *reducing* the menu of eligible fund managers will actually benefit investors. The changes proposed by the Insurer – which involve moving investors primarily from unaffiliated Target Funds to Destination Funds affiliated with the Insurer – are rife with conflicts of interest. The Commission must evaluate these changes through that lens as required by Section 26(c), in which Congress recognized the Commission as the only safeguard for substitutions of underlying funds.[31]

Further, stating that the proposed substitutions create "improved fund manager selection" is likely pretext for the real underlying reason of the proposed substitutions. Many of the proposed Destination Funds are index funds, against which it is easier for insurance companies to hedge risk.[32] Allowing the Insurer to better hedge its risks is a benefit that flows solely to the Insurer,

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30 *See* Letter from Raymond James (January 14, 2020), included as part of Reply to Opposition to Hearing Request from Allianz Life Insurance Company of North America, *et al.* on Application, File No. 812-14722 (Feb. 12, 2020), *available at* https://www.sec.gov/comments/812-14722/812-14722-11.pdf.

31 *See* Securities and Exchange Commission, Public Policy Implications of Investment Company Growth (1966) at 337. The Commission recommended in its 1966 Staff study cited above, and Congress subsequently adopted, amendments to Section 26(c) that "[S]ection 26 be amended to require that proposed substitutions may not occur without Commission approval. . . . 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 [1940] Act." Prior to these amendments, substitutions were permitted merely upon notice to contract holders.

32 *See* Letter from Raymond James, *supra* note 30 ("Providing a minimum amount of guaranteed income to policyholders for life on an account value that can fall in value is a risky proposition for the insurance companies.

and may undermine benefits and guarantees currently provided under the contracts to investors. Given that a Commission order approving the substitution is tantamount to unilaterally taking away investors' investment decisions, the Commission must demand that the Insurer carry the burden of demonstrating how taking away investor choice under these circumstances protects investors.[33]

3. "Cost-Free" Substitutions that Result in the Taking Away of Investor Choice Do Not Benefit Investors – The Substitutions Harm Investors

Another "benefit" cited in the Application is that contract holders will not have to pay any of the expenses associated with the substitutions. But this purported "benefit" leaves investors, at best, no worse off, while potentially causing them harm going forward. Not charging contract holders transactional costs for the proposed substitutions certainly does not hurt contract holders, but it does not benefit contract holders either, as transactional costs would not exist if the substitutions never occurred. Further, arguing that the transactions would be "cost-free" to investors obscures the reality that the investor's choice is being taken away, which is a far greater consequence. Weighed against the unilateral nature of taking away investors' choice permanently, one-time transactional costs are far less significant to a contract holder than the un-analyzed long-term costs and loss of benefits connected with the substitutions, as discussed in Section II.C below.

B. The Application Fails to Demonstrate that the One Potential Investor Benefit – Lower Operating Expenses – Supports the Proposed Substitutions

After citing three benefits that offer no benefit to investors and primarily serve to benefit the Insurer, the Application seeks to support the proposed substitution by claiming that the Destination Funds – after taking into account temporary expense caps and fee waivers[34] – charge the same or lower total operating expenses than the Target Funds. But the Application provides insufficient information to enable the Commission to determine whether this purported benefit outweighs all of the other negative effects of the substitution. In making this simplistic argument, the Application overlooks the numerous complexities inherent in such an analysis and – given the many factors that may be involved – provides insufficient information to test the Insurer's claim

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The financial crisis taught the variable annuity industry just how risky that can be. Insurance companies attempt to manage that risk by hedging the various sub-accounts. It is far easier for the insurance companies to hedge an indexed sub-account than an actively managed sub-account. In addition, the less volatile the sub-account, the cheaper the hedge for the insurance companies. These resulting benefits for the insurance companies generally result in marginal, if any, benefits to the policyholder."); *also* Allianz's Form 10-K for 2015, *supra* note 5.

33 Moreover, dating back over 20 years ago, certain of the variable contracts at issue have been marketed as offering funds advised by the Advisers. These marketing materials pointed to the benefits investors received from the multitude of investment opportunities that the products offered. For investors who purchased variable contracts in reliance on this marketing, it is hard to understand how using the Advisers in advertising materials to sell variable contracts and then removing the Advisers' funds once the contracts have been sold could constitute an "improved fund manager selection." The Insurer has provided nothing but conclusory and baseless statements in discussing how reducing fund manager selection and removing the funds investors selected would benefit these investors.

34 As there is no guarantee that these temporary limitations or waivers will be renewed, the Insurer's argument of generally lower fees is misleading for certain funds. *See infra* Section II.C.3.

that lower operating expenses will benefit investors here.[35] Thus, the Commission cannot evaluate whether lower expenses will actually benefit investors, or whether they are merely a "red herring" designed to distract from the numerous disadvantages the substitutions could bring and their fundamental removal of contract holders' choices. Although expense ratios are certainly a factor in evaluating substitutions, there are substantial and material investment and operational differences between certain of the Target Funds and the Destination Funds, as discussed below in Section II.C, which require a holistic review.

C. Additional Factors – Not Discussed in the Application – Make it Impossible for the Commission to Evaluate whether the Proposed Substitutions would Protect Investors

The Application is silent on the critical analysis and data that is required to determine whether investors will actually benefit from the proposed substitutions. Even the Insurer, in its filings related to the Adviser's Request for a Hearing, has acknowledged the lack of empirical analysis on the effects that the substitutions will have on variable contract benefits.[36] Further, there are significant but unanswered questions in the Application, such as:

- How many variable contract holders will be affected by the proposed substitutions and how many contract holders will be denied previously selected choices of underlying funds?
- Whether the various forms of variable contracts are substantially the same with respect to characteristics that affect the choice of underlying funds—such as riders, benefits and options?
- What are the available guarantees for each variable contract?[37]
- How would the proposed substitutions affect the payouts under certain guarantees, which are fundamentally structured by the underlying fund performance?
- What percentage of variable contract holders are currently annuitizing or in the accumulation stage, as each stage fundamentally affects underlying fund choice?

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[35] Further, due to the loss of economies of scale shareholders are likely to suffer as a result of the substitutions, total operating expenses on a long-term basis are likely to increase for some contract holders once any fee waivers or expense limitations expire or are not renewed.

[36] *See, e.g.*, 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, at 6 (Jan. 23, 2020) [hereinafter referred to as Response to Hearing Request], *available at* https://www.sec.gov/comments/812-14722/812-14722-10.pdf (confirming that the Insurer has not engaged in "a Monte Carlo-type analysis [to predict] the effect of the Substitutions on the value of various guarantees under the Contracts.").

[37] For example, speaking generally about variable contracts, those with guarantees, such as guaranteed income for life (the most popular contract option for many years of the last decade) can make possible a more aggressive choice of underlying fund risk and potential return characteristics. In turn, funds with higher levels of potential return (which, if realized, would increase the variable contract value) address the potential shortcoming of the guaranteed income for life—that periods of high inflation might make the rate of guaranteed income insufficient as higher levels of inflation would presumably be accompanied by higher equity prices. Reconciling these characteristics, however, proved much more expensive after 2008-2009 than insurance companies had anticipated as the hedges the insurance companies needed to purchase became too expensive.

- Whether any offered short-term cap on expenses or fee waiver can outweigh the effect on the variable contract benefits and the potential future implicit and explicit costs contract holders will bear?[38]
- How will the proposed substitutions affect the remaining shareholders in the funds after such substitutions occur?

Instead of addressing these questions, the Application ignores the range of effects the proposed substitutions may have on the contractual benefits and guarantees attached to the variable contracts, lacks adequate analysis and data regarding the substantially different investment strategies of the Target Funds and the Destination Funds, and fails to provide information about the contract holders necessary to ascertain the true impact and potential harm contract holders will suffer when switched to the Destination Funds. Even if the Insurer were to provide this critical analysis and data, the Commission is then required to evaluate it, whether by relying on DERA or otherwise. Each factor is discussed in detail below.

1. Impact on Contractual Rights

According to the Application, the proposed substitutions will affect 36 different Insurer variable contracts. Each variable contract contains its own guaranteed death benefits and living benefits. The effect of a substitution on each contract and the accompanying guaranteed benefits varies greatly depending upon factors such as the performance of the fund, frequency of the election of the benefit, and the timing of the exercise of the benefits. Depending on the contract and guarantee, fund returns can produce outcomes ranging from enhancing value, decreasing value, having an approximately equal chance of increasing or decreasing value, or having no effect on value. The Insurer asks the Commission to rely without question on its statement in its filings that the Insurer cannot predict any effect of the proposed substitutions on the contractual guarantees.[39] The assertion that the Insurer, as an insurance company, is not capable of calculating potential changes and hedging risk seems somewhat incredulous.

The fundamental means by which institutional investors, including insurance companies, allocate investments is by analyzing data regarding historical return, risk and volatility characteristics of various asset classes. Though prior performance is no guarantee of future performance in a specific sense (particularly over a short-term), the Insurer could use such data to show some range of outcomes of the effect the proposed substitutions would have had over the long-term on the contracts and guarantees due to varying performance. It is extremely unlikely that the Insurer simply picked the Destination Funds at random, but rather proposed the substitutions affecting billions of dollars in assets by performing detailed analyses of the

[38] The Insurer states in its Application that each Destination Fund would be subject to a two-year expense cap that would limit total expenses to those of the Target Fund. As discussed *infra* Section II.C.3, the two-year expense cap noted in the Application may be of little value to contract holders who intend to hold their contracts for more than two years. As variable contracts are marketed as long-term investments, the Commission would need to know the percentage of contract holders in the accumulation stage to evaluate the potential benefit of the two-year expense cap. *See infra* note 44 (quoting the then-Director of the Division of Investment Management in 2009 regarding the long-term nature of variable contracts).

[39] Response to Hearing Request, *supra* note 36, at 6.

Destination Funds compared to the Target Funds. Submitting data-driven comparisons of prior consequences of fund choice on the contracts and guarantees would allow the Commission to determine whether the proposed substitutions have the potential to materially affect contract holders. For example, for the variable contracts at issue in the Hartford application, investors whose actively-managed funds outperformed the relevant benchmark received an increase in their minimum benefit under the variable contract.[40] Because the Application currently provides no evidence or analysis to demonstrate the impact on investors, the Commission cannot determine the impact of the substitutions, especially when nothing in the record even details how many contract holders own the Insurer variable contracts and would be impacted by the proposed substitutions.

Further, in other contexts former Directors of the Division of Investment Management have cautioned investors about the loss of benefits related to contractual guarantees when accepting a buyout from an insurance company.[41] These buyout offers proliferated after 2008-2009 when insurance companies found the cost of hedging their variable contract guarantees increased dramatically. In a buyout offer, insurance companies offer cash consideration to contract holders in exchange for the contract holders forgoing their variable contract benefits. Yet here, the Insurer asks the Commission to accept its Application without providing any information regarding the effect the substitutions will have on the contractual guarantees and offers no additional consideration to contract holders. The record cannot support a determination that the proposed substitutions are "consistent with the protection of investors" as required by Section 26(c) as the Insurer has provided no analysis of the effect that the proposed substitutions would have on the 36 different variable contracts and each contract's guarantees. While future performance cannot be predicted, the Insurer should offer empirical analysis to aid in predicting the effects of the proposed substitutions on the 36 different variable contracts and accompanying guarantees under different market scenarios. Many insurance companies already perform this analysis as part of their

40 Hearing Request from American Funds Insurance Series, File No. 812-14446 (Dec. 30, 2016), *available at* https://www.sec.gov/comments/812-14446/81214446-1485437-130579.pdf ("The replacement funds offer contract holders less upside, thereby devaluing the guarantees and depriving contract holders of the potential upside they actively sought and for which they paid.").

41 *See* 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 ("The staff believes these sorts of [buyout] offers should remain under a spotlight given our ongoing concern that they may not be beneficial for all, or even most, contractowners. It is difficult to quantify the value of a living benefit, which changes over time with market movements and other variables. It is thus difficult to compare contracts in an exchange offer, or to assess any offer for a buyout of one's contract. Accordingly, let me reiterate my encouragement to you 'to carefully monitor sales practices associated with these offers."). Mr. Grim was the Director of the Division of Investment Management in 2016. *See also* N. Champ, "Remarks to the ALI CLE 2012 Conference on Life Insurance Company Products," Washington, DC (Nov. 1, 2012), *available at* https://www.sec.gov/news/speech/2012-spch110112nchtm ("On a related note, several issuers of variable annuities, again generally those with generous living benefits, have recently made exchange offers for newer contracts that do not feature those benefits. Some insurers have also offered inducements, such as cash bonuses, to contract owners who surrender their contracts or terminate living benefit riders. These actions raise questions about the suitability of both the original transaction and the exchange, where the original transaction was perhaps premised on the value and importance of the living benefits and the exchange removes or reduces those same benefits. A careful consideration of the risks associated with the design of any product could assist in avoiding the scenarios playing out now. Going forward, the Division urges you to keep in mind steps you may have to take in the future to limit your risk, think through how this affects your customers, and consider how you can make your customers aware of the risks they may face with the product you are selling them."). Mr. Champ was the Director of the Division of Investment Management in 2012.

financial risk analysis, and it is likely such empirical data is within the Insurer's capabilities to produce.

2. Substantially Different Investment Strategies

As the Insurer has not provided evidence or analysis demonstrating that the proposed substitutions would not fundamentally alter the availability of the types of options underlying each affected variable contract as a whole, it is impossible to determine if the proposed substitutions are "consistent with the protection of investors" as required by Section 26(c). Further, the Insurer has provided no evidence that the significantly different characteristics of the Destination Funds would not fundamentally alter the benefits offered by the variable contracts. Although the Application states in a conclusory fashion that "the investment objective, principal investment strategies and principal risks of each Target Fund are similar or substantially similar to those of the corresponding Destination Fund," several of the Destination Funds have investment strategies that are insufficiently similar to those of the Target Funds. More analysis is needed to determine how replacing the Target Funds with substantially different Destination Funds will affect the choices available to contract holders and the value of the variable contracts, especially as compared against what was offered to contract holders when they initially invested.

For example, if part of the value of the contracts lay in the availability of actively managed equity investment options and the proposed substitutions were primarily passively managed equity index options, these changes would profoundly alter the variable contracts, as would any significant variation in the risk and potential return of the investment option. Investors may have chosen active management for characteristics such as value style management and potential downside protection, and now the Insurer is asking the Commission to unilaterally change that investment decision through government action. Differences between certain of the Target Funds and Destination Funds are illustrated by the example below:

Proposed Substitution 2	
Templeton Growth VIP Fund[42]	AZL MSCI Global Equity Index Fund[43]
• Classified as a Large Value investment style. • **Selects securities based on a "bottom-up," value-oriented, long-term approach**, focusing on the market price of a company's securities relative to the Adviser's evaluation of the	• Classified as a Large Blend investment style. • **Seeks to track an index**, the MSCI World Index, utilizing a passive investment strategy. • Index has **1,643 constituents**. • Invests **only in developed markets** and, according to the May 2020 Registration

[42] Information for the Target Funds in these tables is taken from the Target Funds' Registration Statement on Form N-1A, Franklin Templeton Variable Insurance Products Trust (filed April 27, 2020), *available at* https://www.sec.gov/Archives/edgar/data/837274/000137949120001654/filing1611.htm#213215811 and the Target Funds' Certified Shareholder Report on Form N-CSR, Franklin Templeton Variable Insurance Products Trust (filed March 6, 2020), *available at* https://www.sec.gov/Archives/edgar/data/837274/000119312520064506/d865385dncsr.htm.

[43] Information for the Destination Funds in these tables is taken from the Destination Funds' Registration Statement on Form N-1A, Allianz Variable Insurance Products Trust (filed April 27, 2020), *available at* https://www.sec.gov/Archives/edgar/data/1091439/000109143920000003/azlvip485bapril272020.htm and the Destination Funds' Certified Shareholder Report on Form N-CSR, Allianz Variable Insurance Products Trust (filed March 6, 2020), *available at* https://www.sec.gov/Archives/edgar/data/1091439/000119312520064606/d868036dncsr.htm.

company's long-term earnings, asset value and cash flow potential. • According to the 2019 Annual Report, the fund consisted of approximately **75 different securities**. • Invests predominantly **in the equity securities of companies located anywhere in the world, including developing markets**. • Invests in companies of any size, **including small- and mid-capitalization companies**. • According to the 2019 Annual Report, the fund was underweight in the financial services industry and overweight in energy.	Statement, such countries were limited in number to 23. • Limited to companies within the top 85% of equity market capitalization, which is **large- and mid-capitalization companies**. According to the May 2020 Registration Statement, the index constituted equity issuers with a market capitalization of between approximately $963 million and $1,235 billion. • The May 2020 Registration Statement states that the index primarily includes financial services, healthcare, information technology and consumer discretionary companies.
Proposed Substitution 9	
Franklin Mutual Shares VIP Fund	AZL Russell 1000 Value Index Fund
• The fund **invests** primarily **in** common stock of U.S. and foreign **companies that the Adviser believes are available at market prices less than their value based on certain recognized or objective criteria (intrinsic value).** • **May invest a significant portion of fund assets (up to 35%) in foreign securities**. • The fund is **not limited to pre-set maximums or minimums governing the size of the companies in which it may invest**; however, the fund generally invests in companies with market capitalizations greater than $5 billion, with a portion or significant amount in smaller companies. • According to the 2019 Annual Report, the fund consisted of **approximately 100 different securities**. • According to the 2019 Annual Report, performance is driven by allocations to individual securities, as the top 10 holdings constitute approximately 25% of assets.	• **Seeks to track an index**, the Russell 1000 Value Index, **utilizing a passive investment strategy**. • The index is composed of the **largest securities of the U.S stock market**. • The index is constructed to provide a comprehensive and unbiased barometer for the **large-cap** value segment. • According to the 2019 Annual Report, the fund consisted of **approximately 750 different securities**.

The fundamental differences between the Target Funds and Destination Funds in the above examples point to the consequences facing investors in this Application and the resulting impact to investors' financial plans. The Insurer is not registered as an investment adviser, owes no fiduciary duty to contract holders, and has no board of trustees involved in the proposed substitutions. Yet, the Insurer asks the Commission to disregard contract holders' investment decisions by directing contract holders into substantially different funds than they previously chose. Although the Insurer cannot give investment advice, it has chosen proprietary Destination Funds that suit its interests, and then asks the Commission to issue an order blessing the Insurer's judgment – one that is rife with conflicts of interest. The Commission is therefore in the position of having to justify the substitution and the taking away of the investors' choices, but the Insurer has failed to provide any kind of analysis to demonstrate that the substitution is in the investors' best interests.

Further, variable contracts are often marketed and sold on the basis that they offer investors choices of funds from an array of well-known money managers. The Advisers have been marketed as a fund manager option for several of the variable contracts affected by the proposed substitutions. To then remove the Target Funds that the investors chose is an unfair "bait-and-switch" tactic inapposite to the "protection of investors" required under Section 26(c). If contract holders are going to have their investment choices unilaterally taken away by agency action, then at a minimum the Commission should perform a thorough and objective side-by-side analysis of each proposed substitution to ensure that investors are protected.

3. Age of Contract Holders and Economies of Scale

The Insurer fails to provide several other important data points in its Application, such as the average age of affected contract holders and average age of annuitization. Without the average age of affected contract holders, any offer to cap expenses for a two-year period following the substitutions may be just another "red herring" argument, as the Commission cannot determine if the cap would outweigh the long-term detriment caused by any potential loss of economies of scale. For example, if the majority of contracts will not start paying out and annuitizing until after two years, a two-year expense cap will not benefit shareholders transferred to a smaller Insurer-affiliated Destination Fund when the redemptions, and the associated transaction costs, start to increase. Given the long-term nature of variable contracts, we believe this outcome to be likely.[44]

The singular focus on expense ratios as capped by short-term expense limitations and fee waivers obscures the detrimental long-term impact the substitutions might have. The loss of economies of scale to contract holders that will result from the transfer of their assets from the Target Funds, some of which are currently quite large, to the Destination Funds, many of which are much smaller, is another consequence of the proposed substitutions that the Insurer has not addressed. An example of how the significantly lower asset size of some of the Destination Funds could increase the *pro rata* expense charge for each contract holder and the total expense ratio in the long-term,[45] is demonstrated below:

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[44] *See* A. Donohue, "Remarks Before the ALI-ABA Conference on Life Insurance Company Products," Washington, DC (Nov. 6, 2009), *available at* https://www.sec.gov/news/speech/2009/spch110609ajd.htm ("Investors look to variable products, and in particular, the living benefit riders that have become so central to the marketing of these products, to address particular financial objectives. Investors have legitimate expectations that they will get the benefit of the bargain that they struck with an insurer when buying a contract. This is perhaps more important for variable contracts than for other investment vehicles, given the long-term nature of the investment, and the significant surrender charges and tax penalties facing an investor whose expectations have been frustrated and who therefore looks to move on . . . ."). Mr. Donohue was the Director of the Division of Investment Management in 2009.

[45] This statement assumes that the proposed contractual expense limitation, which expires after two years according to the Application, and any current fee waiver, which only lasts for one year, will not be renewed. As there is no guarantee from the Insurer to renew anything in perpetuity, this is a reasonable assumption.

	Franklin Income VIP Fund, Class 1[46]	AZL Fidelity Institutional Asset Management Multi-Strategy Fund, Class 1[47]	Franklin Income VIP Fund, Class 2[46]	AZL Fidelity Institutional Asset Management Multi-Strategy Fund, Class 2[47]
Management Fee	0.46%	0.43%[48]	0.46%	0.43%[48]
Distribution and service (12b-1) fees	0.00%	0.00%	0.25%	0.25%
Other Expenses	None[49]	0.07%	None[49]	0.07%
Total	0.46%	0.50%[50]	0.71%	0.75%[50]
AUM (in millions)[51]	$269.02	$0	$3,530	$516.85
Assets Transferring (in millions)[52]	$105.360		$878.393	

These issues are only likely to be exacerbated for shareholders of Target Funds that are being moved to new share classes of the Destination Funds that have no assets under management. Further, because the Insurer has not provided any evidence or critical analysis on the average age of contract holders, the Commission is unable to determine if any loss of economy of scale could result in any potential redemption issues for contract holders. If the average age of the contract holders is older, meaning they are more likely to begin redeeming, that could also put liquidity constraints on the smaller Insurer-affiliated Destination Funds. Because the Insurer has provided no data on the average age of the affected contract holders and the average age of annuitization, there is no record to support a determination that moving assets into much smaller Insurer-affiliated Destination Funds would be "consistent with the protection of investors" as required under Section 26(c).

CONCLUSION

Nothing prevents the Insurer from adding the Destination Funds as additional investment options to the variable contracts. Instead, the Insurer seeks the Commission to direct, via unilateral governmental action, shareholders out of funds that they selected and into the Insurer-affiliated

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46 According to Registration Statement on Form N-1A, Franklin Templeton Variable Insurance Products Trust, *supra* note 42.

47 According to Registration Statement on Form N-1A, Allianz Variable Insurance Products Trust, *supra* note 43.

48 The current management fee is 0.70%, but if the Application is approved the Insurer represents in the Application that it will lower the management fee to 0.43%.

49 The Adviser has contractually agreed in advance to reduce its fee as a result of the Target Fund's investment in Franklin Templeton money market funds (i.e. acquired fund fees and expenses). The Target Fund would be charged 0.01% in acquired fund fees and expenses if not for the waiver.

50 There is an expense limitation in place for the AZL Fidelity Institutional Asset Management Multi-Strategy Fund that would limit the operating expenses to 0.46% for Class 1 and 0.71% for Class 2 through at least April 30, 2021, but no guarantee is provided after April 30, 2021. *See* Registration Statement on Form N-1A, Allianz Variable Insurance Products Trust, *supra* note 43. The calculations do not include the aforementioned expense limitation agreement.

51 Taken from the Financial Times, https://markets.ft.com/data/funds/us (as of June 30, 2020).

52 As of June 30, 2020.

Destination Funds, often with significantly different investment objectives and a lack of economies of scale, without providing the evidentiary record and critical analysis and data upon which the Commission could base a determination that such substitutions are "consistent with the protection of investors" as required by Section 26(c). Of the four claimed benefits in the Application, three provide a benefit only to the Insurer and no benefit at all to investors, while the fourth provides insufficient information to enable the Commission to determine whether this purported benefit outweighs all of the other negative effects of the substitutions. Further, the Insurer's Application fails to answer at least seven critical questions on the effect of the proposed substitutions on contract holders. For the reasons laid out in this Written Statement, the evidentiary record as it currently exists does not meet the standard of review in *Susquehanna* and subsequent Commission releases, which requires critical review and forbids "unquestioning reliance" on an applicant's arguments. Therefore, an order cannot issue. Further, once the Insurer provides the necessary information, the Commission is required to evaluate it, whether by relying on DERA or otherwise.

In sharp contrast to Section 26(c), it is ironic that certain transactions less significant than the proposed substitutions require board and shareholder approval. For example, the assignment of an investment advisory contract resulting from a technical change in control of the parent owning the investment adviser causes the investment advisory contract to terminate under the explicit terms of the 1940 Act. The investment adviser must then seek board approval and a shareholder vote to approve the new investment advisory contract, even if the investment adviser (and the services it provides and the fees it charges) and/or the strategy itself is not changing. Here, the Insurer's substitution request, if granted, is tantamount to taking away the investors' decisions and selected investment strategy, without any board oversight or shareholder approval. In the context of variable contract insurance products, where there is no fiduciary duty owed by the insurance company and, at the variable contract-level, no investment adviser or board of trustees, the requirements of Section 26(c) represent Congressional recognition that the Commission is the variable contract owners' only safeguard. If such an order is to be issued, the Commission must perform a thorough analysis of all the facts to justify taking away investor choice and to demonstrate that shareholders are being protected by such an action.

Should you have any questions or would like to discuss this Written Statement, please feel free to call me at 202 373-6725 or Monica L. Parry at 202 373-6179.

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Very truly yours,

Thomas S. Harman

cc: The Hon. Jay Clayton, Chairman
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 Cellupica, Deputy Director and Chief Counsel, Division of Investment Management
Rick A. Fleming, Office of the Investor Advocate
Alison Baur, Franklin Templeton Investments
Kevin Kirchoff, Franklin Templeton Investments
Erik T. Nelson, Senior Securities Counsel, Allianz Life Insurance Company of North America
Chip C. Lunde, Carlton Fields, LLP

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served upon:

> Chip Lunde, as counsel to Allianz Life Insurance Company of North America, *et al.*
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via electronic mail on July 31, 2020 before 5:30 p.m.

Thomas S. Harman