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August 17, 2020

BY E-MAIL

Ms. Vanessa Countryman
Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington D.C. 20549
Secretarys-Office@sec.gov

**Re: In the Matter of Allianz Life Insurance Company of North America, et al.,
Application for an Order of Substitution (File No: 812-14722)**

Dear Ms. Countryman,

Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York hereby file the enclosed Allianz Responsive Written Statement in support of the above-referenced substitution application (the "Application") pursuant to the Commission's July 1, 2020 Order Granting Hearing and Scheduling Filing of Statements regarding the Application (Investment Company Act Release No. 33916).

The enclosed Allianz Responsive Written Statement in support of the Application has been served by e-mail on the opposing parties in accordance with the Order, and as reflected in the Certificate of Service attached to the Written Statement.

Respectfully submitted,



Chip Lunde

Enclosures

cc: Dalia Blass, Director, Division of Investment Management (*w/ encl.*)
Paul G. Cellupica, Deputy Director and Chief Counsel, Division of Investment
Management (*w/ encl.*)
Erik T. Nelson, Senior Securities Counsel, Allianz Life Insurance Company of North
America (*w/ encl.*)
Thomas S. Harman, Morgan, Lewis & Bockius LLP (*w/ encl.*)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of Allianz Life Insurance Co.
of North America, et al.

File No. 812-14722

ALLIANZ RESPONSIVE WRITTEN STATEMENT IN SUPPORT OF
APPLICATION FOR AN ORDER OF SUBSTITUTION

August 17, 2020
Washington, DC

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Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York (together, “Allianz”) submit this Responsive Written Statement in support of the above-referenced substitution application (the “Application”)¹ and in response to the July 31, 2020 written statement submitted by Franklin Advisers, Inc., Franklin Mutual Advisers, LLC, and Templeton Global Advisors Limited (collectively, the “Advisers”)² in opposition to the Application. Allianz’s Responsive Written Statement is submitted pursuant to the Commission’s July 1, 2020 Order Granting Hearing Request and Scheduling Filing of Statements.³

I. Facts Supporting the Application

The substitutions described in the Application (“Substitutions”) meet all of the requirements for Commission approval under Section 26(c) for the reasons stated therein and in Allianz’s July 31, 2020 written statement in support of the Application (“Allianz July Written Statement”).⁴ In seeking to oppose the Application, the Advisers make inaccurate and unsubstantiated claims about both the facts and the law involved. However, the Advisers’ claims cannot supplant the actual facts at hand, or overcome the decades of precedent, investor

¹ On December 7, 2016, Allianz Life Insurance Company of North America, et al. (the “Applicants”) filed the Application for an order approving the substitution of certain securities that fund certain Allianz variable annuity and variable life insurance contracts (the “Contracts”) pursuant to Section 26(c) of the Investment Company Act of 1940 (the “1940 Act”) and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act. Applicants amended and restated the Application on May 31, 2017, August 4, 2017, May 31, 2019, and August 13, 2019 in response to Commission staff (“Staff”) comments.

² Advisers’ July 31, 2020 Written Statement in opposition to the Application, submitted by Morgan, Lewis & Bockius LLP (“Advisers July Written Statement”).

³ Order Granting Hearing Request and Scheduling Filing of Statements In the Matter of Allianz Life Insurance Co. of North America, et al., Rel. No. IC-33916 (July 1, 2020) (File No. 812-14722) [hereinafter, “Hearing Order”].

⁴ Allianz’s Written Statement in Support of Application for an Order of Substitution, submitted via email to Ms. Vanessa Countryman, Secretary of the Commission on July 31, 2020.

protection conditions, and substantial Contract owner benefits that support the approval of the Substitutions, as discussed below.⁵

A. Fund Fees and Expenses

Two-Year Expense Cap Condition. The Advisers claim that the Substitutions will provide only short-term benefits due to the two-year expense cap condition of the Application.⁶ However, this claim has no merit because the replacement funds have the same or lower management fees⁷ and the same or lower total net expenses (26 basis points lower, on average) than the corresponding target funds *without* the two-year expense cap.⁸ Accordingly, the benefits of lower management fees and lower total fund expenses do not depend on the standard two-year expense cap condition of the Application, and the Substitutions will provide benefits that *exceed* the benefit of the standard expense cap condition.

Economies of Scale. The Advisers argue that the Substitutions will result in a “loss of economies of scale to contract holders.”⁹ The Advisers ignore the fact that regardless of any economies of scale of the target funds, the replacement funds still have lower expense structures (in most cases *significantly* lower). As a result, any target fund’s economies of scale, in and of themselves, provide no benefit to Contract owners relative to the benefit of lower-cost structures of the replacement funds. In this case, Contract owners will *gain* lower overall cost structures rather than *lose* economies of scale.

⁵ The Advisers July Written Statement discusses a number of issues that were not previously raised in the Advisers’ letter to Vanessa Countryman, dated January 14, 2020, submitted by Morgan, Lewis & Bockius LLP, requesting a hearing on the Application (“Hearing Request”). Allianz’s Responsive Written Statement addresses certain of those discussions solely to the extent the Commission determines to consider those discussions in its discretion.

⁶ Advisers July Written Statement, p. 11 at note 38 and p. 15.

⁷ Application, p. 10. For Substitution 7, the comparison includes target fund acquired fund management fees.

⁸ Application, pp. 115-133. Expense reductions are based on a comparison of fund expenses as reflected in Appendix C of the Application, including Allianz’s commitment to lower management fees upon approval of the Substitutions.

⁹ Advisers July Written Statement, p. 15.

Size of the Replacement Funds. The Advisers suggest that the replacement funds do not enjoy economies of scale because “many of [the replacement funds] are much smaller.”¹⁰ As a factual matter, after the Substitutions, 7 of the 13 replacement funds will be larger than the corresponding target funds.¹¹ Excluding Substitutions 11 and 12 (each replacing one PIMCO fund with another PIMCO fund), all of the replacement funds will have assets in excess of \$400 million.¹² Notably, for the five Substitutions affecting the Advisers’ funds, following the Substitutions, three of the replacement funds will have more assets than the Advisers’ target funds, and the other two replacement funds will have more than \$1 billion in assets.¹³

Also, per condition 2 of the Application, each of the replacement funds has the same or lower combined management fees and rule 12b-1 fees *at all asset levels* than those of the corresponding target funds.¹⁴ Accordingly, the replacement funds will have the same or lower combined management fees and Rule 12b-1 fees regardless of the relative size of the replacement funds and corresponding target funds.

New Share Classes. The Advisers allege that the loss of economies of scale “are likely to be exacerbated for [substitutions] to *new share classes* of the [replacement funds] that have *no assets* under management.”¹⁵ The Advisers’ allegation is without merit. There are two replacement funds with new class 1 shares.¹⁶ However, the replacement funds’ share classes do

¹⁰ Advisers July Written Statement, p. 15.

¹¹ Source: Morningstar, as of June 30, 2020.

¹² *Id.*

¹³ *Id.* In this regard, the table on page 16 of the Advisers July Written Statement comparing expenses of the funds involved in Substitution 6 reflects only pre-Substitution assets. After the Substitution, the AZL Fidelity Institutional Asset Management Multi-Strategy Fund will have lower management fees and the same or lower total expenses than the Franklin Income VIP Fund.

¹⁴ Application, p. 23.

¹⁵ Advisers July Written Statement, p. 16 (emphasis added by Allianz).

¹⁶ The replacement funds with new class 1 shares are the AZL MSCI Global Equity Index Fund and the AZL Fidelity Institutional Asset Management Multi-Strategy Fund. *See*, Application, Appendix C.

not incur different management fees or other expenses.¹⁷ As shown in Appendix C of the Application, the management fees and other expenses of each replacement fund are the same for all share classes of each replacement fund.¹⁸ The only difference between class 1 and class 2 shares is that class 2 shares have a Rule 12b-1 fee of 0.25%, and class 1 shares have no Rule 12b-1 fee. Accordingly, all Substitution assets allocated to a replacement fund (regardless of class) will benefit fully from the economies of scale enjoyed by the replacement fund.

B. Benefits in Addition to Lower Fees

The Advisers argue that the Application places a “singular focus on expense ratios” and that *other* terms and conditions provide “no benefit at all to investors.”¹⁹ The Advisers’ claims are inaccurate. The Application describes a variety of significant benefits to investors (in addition to lower fund fees and expenses) including, without limitation, (1) similar replacement funds managed by well-known advisers, (2) favorable performance histories, (3) no cost or expense of Substitutions borne by Contract owners, (4) free transfer rights, (5) access to Allianz’s manager of managers order for affiliated funds, (6) contractual expense reductions, and (7) all of the other investor protection terms and conditions of the Application. The Advisers seek to obscure these facts by inaccurate claims of a singular focus on expense ratios. Certain of these other benefits are described further, below.

More Efficient Contract Administration. The Application states that the “Substitutions are part of an overall business plan [to make Allianz’s] products more efficient to monitor and administer and more competitive (both in terms of new sales and the retention of

¹⁷ As the Commission knows, all classes of open-end funds pay the same management fee rates. *See*, Rule 18f-3(a)(1)(ii) under the 1940 Act.

¹⁸ Application, pp 115-133.

¹⁹ Advisers July Written Statement, pp. 15 and 7, respectively.

existing business).”²⁰ As explained in the Allianz July Written Statement,²¹ acquiring and retaining customers promotes operating efficiencies that make it more feasible to maintain up-to-date and attractive investment options and policy features. Allianz submits that the objective of making its products more competitive (and acquiring and retaining customers) is aligned with the interests of both Allianz and its customers. Accordingly, there is no truth to the Advisers’ complaint that “unlike [reduced] fund expenses” which directly benefit Contract owners, “[t]he Application offers no explanation as to how streamlined administrative processes will benefit shareholders.”²² Nevertheless, not all potential benefits of the Substitutions can be as objectively quantified as the fact that the replacement funds have lower expenses and better performance than the target funds managed by the Advisers.

Manager of Managers Order. As described in the Application, shareholders of the affiliated replacement funds will have access to Allianz’s manager of managers order.²³ Under Allianz’s manager of managers order, the replacement of subadvisers when appropriate could be effected more efficiently and the need for fund changes that may affect Contract owners may be reduced. Allianz submits that access to Allianz’s manager of managers order for affiliated replacement funds is a benefit that will be appealing to Contract owners.

Variety of Fund Managers. The Advisers allege that the Substitutions will “reduc[e] the menu of eligible fund managers.”²⁴ This statement is misleading and without merit. BNY Mellon is the only fund management group that will no longer be available after the Substitutions. After the Substitutions, Allianz Contracts will continue to have investment

²⁰ Application, p. 11.

²¹ Allianz July Written Statement, n. 5.

²² Advisers July Written Statement, p. 7.

²³ Application, p. 11.

²⁴ Advisers July Written Statement, p. 8.

options managed by Allianz Investment Management, BlackRock, Columbia, Davis, Eaton Vance, Fidelity, Franklin/Legg Mason, Invesco, Ivy, JP Morgan, Lazard, MFS, PIMCO, and T. Rowe Price (plus funds subadvised by three other managers). Moreover, of the 72 investment options available through the Allianz separate accounts, 49 are managed or subadvised by asset managers that are *not affiliates* of Allianz. The Allianz Contracts, therefore, offer a substantial variety of investment types and investment managers.

Cost-Free Substitutions. Although Allianz is under no contractual obligation to make such updating changes and improvements, it has voluntarily incurred and will continue to incur very substantial costs and expenses in implementing the Substitutions, and Contract owners will bear no such costs and expenses. Accordingly, Allianz's willingness to periodically update the investment lineups and bear all costs and expenses of implementing the Substitutions provides a valuable benefit to Contract owners, contrary to the Advisers' assertions that cost-free substitutions "do not benefit investors."²⁵

C. The Investment Menu

Index Funds. The Advisers suggest that the fact that certain of the Substitutions will replace actively managed funds with passively managed index funds will benefit Allianz by making it easier for Allianz to hedge its risks under the Contracts.²⁶ In this regard, only 3 of the 13 replacement funds are passively managed index funds and another 4 replacement funds are actively managed funds of index funds.²⁷ The selection of index replacement funds for 7 of the Substitutions reflects an effort by Allianz to offer, over the lives of the Contracts, an array of investment options and product features that remains up-to-date in light of changing market

²⁵ Advisers July Written Statement, p. 9.

²⁶ Advisers July Written Statement, pp. 8 and 9. The Advisers do not attempt to explain why an insurer's hedging risks are relevant to an analysis under Section 26(c).

²⁷ Application, pp. 32-114.

conditions and investor needs and preferences. The Substitutions, therefore, expand the opportunity for Contract owners to use index funds, while continuing to make available a diverse array of actively managed non-index funds for Contract owners who prefer that option.

Similarity of Funds. The Advisers argue that certain of the replacement funds have investment strategies that are “insufficiently similar” to those of the corresponding target funds.²⁸ To support this contention, the Advisers provide tables showing certain disclosure differences between the funds involved in Substitutions 2 and 9.²⁹ However, the Advisers omit certain relevant similarities among the funds.

For example, the Advisers emphasize that the Templeton Growth VIP Fund discloses that it may invest in “*small- and mid-capitalization companies*,” but omit the fact that both the target and replacement funds include investments in small- to mid-sized companies as principal risks, and the fact that both funds have virtually identical market capitalization allocations, as demonstrated by the table below:

Average over last 3 Years ended 7/31/20³⁰

Market Cap Comparison	Templeton Growth VIP Fund	AZL MSCI Global Equity Index Fund
Large Cap %	85.0	86.6
Mid Cap %	13.6	13.4
Small Cap %	1.4	0.1

As another example, the Advisers emphasize that the Templeton Growth VIP Fund invests in global equities “*including developing markets*,” but omit the fact that both the target and replacement funds invest over 90% of their assets in developed markets, as demonstrated by the table below:

²⁸ Advisers July Written Statement, p. 13.

²⁹ Advisers July Written Statement, pp. 13-14.

³⁰ Source: Morningstar.

Average over last 3 Years ended 7/31/20³¹

Developed Equity Exposure Comparison	Templeton Growth VIP Fund	AZL MSCI Global Equity Index Fund
Equity Region Developed %	91.2	99.6

Regarding the funds involved in Substitution 9, the Advisers emphasize the fact that the Mutual Shares VIP Fund’s strategy includes investing in equities based on “intrinsic value,” but omit the fact that both target and replacement funds are value funds and have virtually identical equity style allocations over the past 3 years, as demonstrated by the table below:

Average over last 3 Years ended 7/31/20³²

Equity Style Comparison	Franklin Mutual Shares VIP Fund	AZL Russell 1000 Value Index Fund
Value %	56.6	55.4
Core %	33.4	35.9
Growth %	10.0	8.7

As another example, the Advisers emphasize disclosure differences between the Mutual Shares VIP Fund and the AZL Russell 1000 Value Index Fund regarding market capitalizations, but omit the fact that both funds have substantially similar market capitalization allocations over the past 3 years, as demonstrated by the chart below:

Average over last 3 Years ended 7/31/20³³

Market Cap Comparison	Franklin Mutual Shares VIP Fund	AZL Russell 1000 Value Index Fund
Large Cap %	72.9	76.9
Mid Cap %	25.0	21.3
Small Cap %	2.0	1.8

Allianz also notes that the Franklin Mutual Shares VIP Fund and the AZL Russell 1000 Value Index Fund have a high level of correlation of returns at 0.98 over the last 5 years as of June 30, 2020.³⁴

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

Allianz submits the target funds and corresponding replacement funds involved in the Substitutions are substantially similar, consistent with prior Commission orders under Section 26(c) for similar substitutions.³⁵

II. The Advisers' General Opposition to Substitutions

The Advisers offer up a variety of broad criticisms of substitutions without citing any authority.³⁶ The Advisers' criticisms are without merit. Certain of these issues are discussed in more detail, below.

Adding Funds Without Substitution. The Advisers argue that Allianz should not be allowed to effect substitutions and instead should be encouraged to simply add new funds to its Contracts.³⁷ This, however, would increase the costs of administering the Contracts and, therefore, effectively increase the costs of adding new funds.³⁸ This would discourage Allianz and other similarly-situated insurers from adding new fund options that they believe will benefit contract owners. Allianz respectfully submits that this would be contrary to the interests of investors and inconsistent with the purposes of Section 26(c).³⁹

Speculation Regarding Motives. The Advisers speculate that substitutions are driven by insurers' "desire to reduce expenses" and that "contract benefits have proved more expensive than previously predicted,"⁴⁰ and erroneously cite to "Allianz's Form 10-K from 2015" as evidence of this premise.⁴¹ The statements cited by the Advisers do not support their

³⁵ Allianz Life Insurance Company of North America, et al., Rel. No. IC-33721 (Dec. 20, 2019) (File No. 812-14722), p. 12 at note 16 [hereinafter, "Notice of Application"].

³⁶ Advisers July Written Statement, pp. 4, and 9-12.

³⁷ Advisers July Written Statement, p. 4.

³⁸ Such costs would include, among other things, the technology, compliance, and administrative costs of offering more options, and the burdens of overseeing multiple fund managers.

³⁹ Such a policy also would significantly impinge on insurers' contractual right to substitute (and terminate fund arrangements).

⁴⁰ Advisers July Written Statement, p. 2.

⁴¹ Advisers July Written Statement, p. 2 at note 5.

suppositions. First, Allianz does not file Form 10-Ks. Second, the quote, which is an excerpt from the Allianz Group annual report for 2015, states nothing about annuity benefits being more expensive than predicted or about the existence of such a prediction. In fact, the quoted statement in the annual report is not even specific to Allianz Group's U.S. insurance operations or products and merely describes generally Allianz Group's standard ongoing management of risks to its life/health business throughout the world.

Contractual Rights and Obligations. Contrary to the Advisers' assertions,⁴² the Substitutions will not modify in any way the terms of or the rights and obligations under the Contracts.⁴³ The ability to effect substitutions is a contractual right reserved by Allianz under the Contracts, and Contract owners purchase the Contracts with full disclosure and in reliance on Allianz's ability to make substitutions, subject to required regulatory approval.⁴⁴ This arrangement serves as an important basis on which Allianz is able to offer the Contract guarantees.

III. The Basis for Approval of the Substitutions

Substantial Evidence. The Application includes substantial independently-sourced evidence, and is consistent with longstanding historical standards and precedent. The administrative record reflects that both the Commission and its Staff have engaged in extensive independent analysis of the issues in light of the applicable standards for approval under Section

⁴² Advisers July Written Statement, pp. 3 and 13.

⁴³ Similarly, for these same reasons, the Advisers' references to buyout offers (Advisers July Written Statement, p. 12) are inapposite to substitutions.

⁴⁴ Moreover, the target funds and the Advisers entered into the relationship with Allianz fully knowing and accepting that Allianz could effect substitutions under Section 26(c).

26(c). The Advisers' assertions to the contrary⁴⁵ have no merit and are contradicted by the administrative record.

Further, the nature and content of these evidentiary materials are wholly consistent with the nature and content of the evidence that has supported the dozens of other substitution applications reviewed by the Staff and approved by the Commission over the past several decades.⁴⁶

No Obligation to Consider Other Factors. The Advisers complain that the Application does not provide analysis of a variety of factors such as the total number of Contract owners, the comparability of the Contracts and guarantees, the age of Contract owners, and the percentage and age of owners who have annuitized.⁴⁷ The Advisers provide no authority and offer no compelling rationale for the use of this data based on the policy and purpose of Section 26(c).

Similarly, the Advisers assert that “the effect of a substitution on each contract and the accompanying guaranteed benefits varies greatly depending on factors such as the performance of the fund, frequency of the election of the benefit and the timing of the exercise of the benefits.”⁴⁸ However, the Advisers provide no indication of how any such information should or could be assessed for purposes of Section 26(c).

Substitutions necessarily involve the transfer of all of a unit investment trust's assets and accordingly affect all contract owners of a unit investment trust (not just those who own a particular guarantee for a particular period or share other similarities). There is no suggestion in Section 26(c)'s legislative history (a) that the Commission should or could evaluate substitutions

⁴⁵ Advisers July Written Statement, p. 4. Allianz also notes that the Advisers July Written Statement repeatedly erroneously refers to 26(c) as providing an “exemption” and invokes standards such as “demonstrably benefit” without citing any authority. (Advisers July Written Statement, p. 4.)

⁴⁶ Notice of Application, p. 14.

⁴⁷ Advisers July Written Statement, pp. 12, 15.

⁴⁸ Advisers July Written Statement, p. 11.

based on the particular interests of certain subsets of or based on factors that may differentiate among contract owners or (b) that the Commission should or could choose sides in the event of any possible divergent interests or differentiating factors.

Accordingly, the Commission has appropriately given attention to factors more relevant to all investors (such as fund expenses, comparability of funds, transaction costs, expense and/or revenue sharing caps, the range of investment options, and transfer rights) consistent with the balanced objective of Section 26(c). In this regard, substitutions generally have facilitated a shift to modern, less expensive funds for investors.⁴⁹

Not Arbitrary and Capricious. The Advisers suggest that it would be arbitrary and capricious for the Commission to approve the Substitutions.⁵⁰ On the contrary, the Commission and its Staff have invested decades of painstaking attention to developing and refining both (i) the terms and conditions under which the Commission can be confident that such transactions meet the standard for approval prescribed by Section 26(c) and (ii) the nature of the factual representations and information that is necessary and appropriate for applicants to provide in support of such applications. Far from being arbitrarily or carelessly developed, the terms on which the Commission has granted such applications are detailed, nuanced, and highly tailored to the many unique features and specific 1940 Act policy considerations that are characteristic of variable product fund substitutions such as those that Allianz proposes. Indeed, the Commission's development and consistent application of such standards is highly desirable, if not essential, in order to avoid *ad hoc* determinations that are inconsistent in different cases, absent sound reasons. Allianz respectfully submits that the Commission's process and standards

⁴⁹ Allianz July Written Statement, n. 40.

⁵⁰ Advisers July Written Statement, p. 5 at note 14.

for reviewing such substitution applications effectively foreclose any possibility of the Commission's acting arbitrarily or capriciously.

Moreover, the Substitutions fully satisfy the standards that the Commission has developed, including in the context of many quite recent applications that are very comparable to the Application.⁵¹ In this regard, the Advisers have not cited – and could not cite – any distinguishing facts that would justify the Commission's treating the Substitutions differently from numerous other such substitutions that the Commission has approved. Allianz respectfully submits that all Section 26(c) substitution applications should be subject to consistent standards for approval.

Inapposite Disapprovals of SRO Rule Proposals. The Advisers expend considerable effort attempting to cast the Commission's review of the Application through the prism of the D.C. Circuit Court's decision in *Susquehanna*.⁵² In reality, the circumstances in *Susquehanna* bear no resemblance to the circumstances of the Application.

Susquehanna involved Commission approval of a novel rule change proposed by a self-regulatory organization ("SRO") and related policy questions that also were being considered by the Commission for the first time. Moreover, in *Susquehanna*, the Commission was acting pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("1934 Act"),⁵³ which does not specifically address the subject matter of the rule changes that were being proposed by the SRO. In contrast, Allianz seeks approval of a type of transaction (substitutions) that the Commission has previously approved almost 200 times over several decades, subject to

⁵¹ See, e.g., substitution orders cited in Allianz July Written Statement, nn. 24, 32, 37, 40 and 56.

⁵² Advisers July Written Statement, pp. 5-7 (citing *Susquehanna Int'l Grp., LLP v. Sec. & Exch. Comm'n*, 866 F.3d 442 (D.C. Cir. 2017) [hereinafter, *Susquehanna*]).

⁵³ 15 U.S.C. § 78s-(b)(2)(C)(i).

standardized terms, conditions and evidence, and pursuant to a statute that specifically addresses such transactions.

In connection with the Application, Allianz has deliberately presented evidence that is, in form and substance, consistent with what the Commission has judged sufficient to support other comparable substitutions. The Advisers erroneously suggest that the Commission might “simply accept” rather than “evaluate” this evidence.⁵⁴ Nor do the Advisers provide any reason to suppose that the Commission has not evaluated the content and quality of all of the substantial evidence presented by Allianz, as well as relevant evidence from other sources, in light of the standards for approval prescribed in Section 26(c) and in comparison with the evidence that supported comparable substitutions it has approved in the recent past.

Accordingly, the Advisers’ lengthy quotes from *Susquehanna* cannot change the facts that the Commission has considered and evaluated the substantial evidence in connection with the Application and prior comparable applications. In such circumstances, courts have shown deference to the Commission’s determinations. For example, a 2003 opinion of the Court of Appeals for the D.C. Circuit stated that “[t]he making of policy decisions and the resolution of conflicting evidence is for the Commission, not the court,”⁵⁵ and held that the Commission order in question was supported by substantial evidence and was not arbitrary or capricious.⁵⁶

⁵⁴ Advisers July Written Statement, p. 4.

⁵⁵ *Domestic Securities, Inc. v. S.E.C.*, 333 F.3d 239, 249 (D.C. Cir. 2003) [hereinafter “*Domestic Securities*”] (citing *Diamond Walnut Growers, Inc. v. NLRB*, 113 F.3d 1259, 1270 (D.C. Cir. 1997) (courts “must ... give genuine deference to [agencies’] factual findings and ... legal/policy decisions implicit in the inferences drawn from those findings.”)).

⁵⁶ *Domestic Securities* at 249. The court’s reasons included that “[i]t [was] obvious that the Commission considered the evidence and the alternatives presented to it.” *Id.*

The Advisers also cite to two Commission orders pursuant to Section 19(b)(2) disapproving proposed changes to SRO rules.⁵⁷ Both of these orders are as irrelevant to the Substitutions as is the *Susquehanna* opinion, because, among other things, the proposals they addressed were completely different from the Substitutions, and the purposes of Section 19(b)(2) of the 1934 Act are different from those of Section 26(c) of the 1940 Act.

Moreover, as stated above, the Commission has previously considered numerous substitutions comparable to those that Allianz is proposing, which has enabled the Commission to develop the extensive terms and conditions – including the evidence and representations that applicants must provide – that it has determined to be adequate to ensure satisfaction of the statutory standard for granting approvals. By contrast, the Commission had not previously considered SRO proposals that were comparable to those disapproved in *Susquehanna* and the two orders cited by the Advisers.

IV. The Context of the Advisers' Opposition

Impact on Remaining Shareholders. The Advisers urge the Commission to analyze how the Substitutions will “affect the remaining shareholders in the [target] funds after the substitutions.”⁵⁸ As the Commission stated 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],”⁵⁹ and Allianz respectfully submits that any such impact is wholly irrelevant in this case.

⁵⁷ Advisers July Written Statement, p. 6 (citing Order Disapproving Proposed Rule Change Concerning the Options Clearing Corporation’s Capital Plan, Exchange Act Release No. 85121 (Feb. 13, 2019), and Order Disapproving Proposed Rule Change to Introduce a Liquidity Provider Protection Delay Mechanism on EDGA, Exchange Act Release No. 88261 (Feb. 21, 2020)).

⁵⁸ Advisers July Written Statement, p. 11.

⁵⁹ Notice of Application, p. 15.

The Advisers' Self-Interest Is Not a Section 26(c) Factor. Despite the Advisers' pretense of protecting remaining target fund shareholders,⁶⁰ in opposing the Application, the Advisers are essentially asking the Commission to protect their existing advisory fee revenue.⁶¹ Section 26(c) was not intended to accommodate such commercial self-interest of the Advisers.

The Advisers Are Not Interested Persons. The Advisers claim that "the Commission's decision to grant a hearing necessarily concluded that the Advisers are 'interested persons' for purposes of contesting the Application."⁶² The Commission's Hearing Order did not state any such finding. The Advisers do not have any interest in the Application of a type that entitles them to challenge the Application in any way.

The Advisers Have Not Previously Objected to Substitutions. As noted in the Allianz July Written Statement, the Advisers have not previously raised any objections to the Commission's review process and approval of at least eight other recent substitution applications in which the Advisers have been involved.⁶³

No Contract Owner Opposition. In considering the relative merits of the Application and the Advisers' opposition to the Application, the Commission should give weight to the fact that no Contract owner has opposed the Application. The lack of Contract owner opposition is particularly relevant in view of the fact that the Commission's 1966 proposal to Congress regarding substitutions stated that "interested *shareholders* would...have an opportunity to state their views about the proposed substitution" through the notice process.⁶⁴

⁶⁰ The Advisers July Written Statement, pp. 3-4 at note 10.

⁶¹ See Hearing Request, p. 13.

⁶² Advisers July Written Statement, p. 1 at note 2.

⁶³ Allianz July Written Statement, p. 23.

⁶⁴ Securities and Exchange Commission, Public Policy Implications of Investment Company Growth (1966) at 337. (Emphasis added.)

V. **Conclusion**

Each of the proposed Substitutions is consistent with the protection of investors and the policy and provisions of the 1940 Act and meets all of the conditions and standards for a Commission order of approval pursuant to Section 26(c).

The Substitutions will benefit Contract owners and are supported by overwhelming precedent spanning decades.

The Advisers' criticisms regarding the Application, the Commission's review of the Application, and the appropriateness of approval under Section 26(c) are incorrect and unfounded and are fueled by their own admitted self-interest.

Allianz respectfully requests that the Commission promptly issue an order approving the Substitutions.

Allianz Life Insurance Company of North America
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By: 

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August 17, 2020

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 August 17, 2020, I caused a true and correct copy of the foregoing Allianz Responsive Written Statement to be served by e-mail delivery to:

Thomas S. Harman (at thomas.harman@morganlewis.com)
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as attorneys for Franklin Advisers, Inc., Franklin Mutual Advisers, LLC, and Templeton Global Advisors Limited.

Dated August 17, 2020



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