

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 32967; File No. 812-14714

The Guardian Insurance & Annuity Company, Inc., et al.

January 10, 2018

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the “Act”).

Applicants: The Guardian Insurance & Annuity Company, Inc., (“Guardian”), The Guardian Separate Account Q, and The Guardian Separate Account R (each, a “Separate Account” and together, the “Separate Accounts”). Guardian and the Separate Accounts are referred to as the “Applicants.”

Summary of Application: Applicants seek an order pursuant to section 26(c) of the Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the “Existing Portfolios”) for shares of certain investment portfolios of Guardian Variable Products Trust (the “Replacement Portfolios”), held by the Separate Accounts to support certain variable annuity contracts (the “Contracts”). Guardian Variable Products Trust is referred to as the “Trust.”

Filing Date: The application was filed on November 3, 2016 and was amended on April 10, 2017 and September 18, 2017. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 6, 2018 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: Richard T. Potter, Senior Vice President, Counsel and Assistant Corporate Secretary, The Guardian Insurance & Annuity Company, Inc., 7 Hanover Square, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Robert H. Shapiro, Branch Chief at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at

<http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicants' Representations:

1. Guardian is a Delaware stock life insurance company licensed to conduct insurance business in the District of Columbia and all fifty states of the United States. Guardian is wholly-owned by The Guardian Life Insurance Company of America ("Guardian Life"), a mutual life insurance company.

2. Each Separate Account meets the definition of “separate account,” as defined in section 2(a)(37) of the Act and rule 0-1(e) thereunder. The Separate Accounts are registered under the Act as unit investment trusts. The assets of the Separate Accounts support the Contracts and interests in the Separate Accounts offered through such Contracts. Guardian is the legal owner of the assets in the Separate Accounts. The Separate Accounts are segmented into subaccounts, and each subaccount invests in an underlying registered open-end management investment company or series thereof.

3. The Contracts are each registered under the Securities Act of 1933, as amended (the “1933 Act”) on Form N-4. Each Contract has particular fees, charges, and investment options, as described in the Contracts’ respective prospectuses.

4. The Contracts are individual flexible or single premium deferred variable annuity contracts. As set forth in the prospectuses for the Contracts, each Contract provides that Guardian reserves the right to substitute shares of the funds in which the Separate Accounts invest for shares of any funds already held or to be held in the future by the Separate Accounts.<sup>1</sup>

5. Guardian, on behalf of itself and the Separate Accounts, proposes to exercise its contractual right to substitute shares of the Existing Portfolios for shares of the Replacement Portfolios (“Substitutions”), as shown in the table below:

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<sup>1</sup> Certain Contracts make or made available guaranteed living benefit riders (each, a “Living Benefit Rider” and collectively, the “Living Benefit Riders”). The terms of certain Living Benefit Riders include investment restrictions that limit the available investment options to identified allocation models consisting of a specified selection of investment options. A Contract owner with a Living Benefit Rider that has investment restrictions may transfer Contract value by reallocating all of his Contract value to a different allocation model under the rider or, depending on the terms of the rider, by reallocating his Contract value within the parameters of the allocation model.

<b>Substitution No.</b>	<b>Existing Portfolio</b>	<b>Replacement Portfolio</b>
1	Variable Portfolio Loomis Sayles Growth Fund (Class 2)	Guardian Large Cap Disciplined Growth VIP Fund
2	Fidelity VIP Contrafund Portfolio (Service Class 2)	Guardian Large Cap Disciplined Growth VIP Fund
3	Fidelity VIP Growth Portfolio (Service Class 2)	Guardian Large Cap Disciplined Growth VIP Fund
4	Alger Capital Appreciation Portfolio (Class S)	Guardian Large Cap Fundamental Growth VIP Fund
5	BlackRock Capital Appreciation V.I. Fund (Class III)	Guardian Large Cap Fundamental Growth VIP Fund
6	Columbia Variable Portfolio Large Cap Growth Fund (Class 2)	Guardian Large Cap Fundamental Growth VIP Fund
7	Invesco V.I. American Franchise Fund (Series II)	Guardian Large Cap Fundamental Growth VIP Fund
8	MFS <sup>®</sup> Growth Series (Service Class)	Guardian Large Cap Fundamental Growth VIP Fund
9	Oppenheimer Capital Appreciation Fund/VA (Service Shares)	Guardian Large Cap Fundamental Growth VIP Fund
10	T. Rowe Price Blue Chip Growth Portfolio (Class II)	Guardian Large Cap Fundamental Growth VIP Fund
11	Invesco V.I. Core Equity Fund (Series II)	Guardian Diversified Research VIP Fund
12	MFS <sup>®</sup> Core Equity Portfolio (Service Class)	Guardian Diversified Research VIP Fund
13	MFS <sup>®</sup> Investors Trust Series (Service Class)	Guardian Diversified Research VIP Fund
14	Pioneer Fund VCT Portfolio (Class II)	Guardian Diversified Research VIP Fund
15	MFS <sup>®</sup> Value Series (Service Class)	Guardian Large Cap Disciplined Value VIP Fund

<b>Substitution No.</b>	<b>Existing Portfolio</b>	<b>Replacement Portfolio</b>
16	Pioneer Equity Income VCT Portfolio (Class II)	Guardian Large Cap Disciplined Value VIP Fund
17	AB Value Portfolio (Class B)	Guardian Growth & Income VIP Fund
18	Invesco V.I. Comstock Fund (Series II)	Guardian Growth & Income VIP Fund
19	Invesco V.I. Growth and Income Fund (Series II)	Guardian Growth & Income VIP Fund
20	Invesco V.I. International Growth Fund (Series II)	Guardian International Growth VIP Fund
21	Oppenheimer International Growth Fund/VA (Service Shares)	Guardian International Growth VIP Fund
22	Wells Fargo VT International Equity Fund (Class 2)	Guardian International Value VIP Fund
23	Ivy VIP Mid Cap Growth	Guardian Mid Cap Traditional Growth VIP Fund
24	American Century VP Mid Cap Value Fund (Class II)	Guardian Mid Cap Relative Value VIP Fund
25	Invesco V.I. American Value Fund (Series II)	Guardian Mid Cap Relative Value VIP Fund
26	Invesco V.I. Mid Cap Core Equity Fund (Series II)	Guardian Mid Cap Relative Value VIP Fund
27	MFS® Total Return Bond Series (Service Class)	Guardian Core Plus Fixed Income VIP Fund
28	PIMCO Total Return Portfolio (Advisor Class)	Guardian Core Plus Fixed Income VIP Fund

6. The Replacement Portfolios are series of the Trust, a Delaware statutory trust registered as an open-end management investment company under the Act (File No. 811-23148) and whose shares are registered under the 1933 Act (File No. 333-210205). The

Replacement Portfolios are currently available only as investment allocation options under variable insurance contracts issued by Guardian.

7. Park Avenue Institutional Advisers LLC (“Park Avenue”), an indirect wholly-owned subsidiary of Guardian Life, serves as the investment adviser of each Replacement Portfolio. Park Avenue is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940. Each Replacement Portfolio is sub-advised by a registered investment adviser that is unaffiliated with Applicants, the Trust, or Park Avenue.

8. Applicants state that the proposed Substitutions are part of a strategic business goal of Guardian to improve the administrative efficiency and cost-effectiveness of the Contracts, as well as to make the Contracts more attractive to Contract owners. Applicants note that the proposed Substitutions are intended to improve portfolio manager selection<sup>2</sup> and simplify fund lineups while reducing costs and maintaining a menu of investment options that would offer a similar diversity of investment options after the proposed Substitutions as is currently available under the Contracts. Applicants believe that the Replacement Portfolios have investment objectives, principal investment strategies, and principal risks, as described in their prospectuses, which are substantially similar to the corresponding Existing Portfolios,

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<sup>2</sup> The Trust and Park Avenue may rely on an order from the Commission that permits Park Avenue, subject to certain conditions, including approval of the Trust’s board of directors but without the approval of shareholders, to select certain wholly-owned and non-affiliated investment sub-advisers to manage all or a portion of the assets of each portfolio of the Trust pursuant to an investment sub-advisory agreement with Park Avenue, and to materially amend sub-advisory agreements with Park Avenue. *See* Guardian Variable Products Trust and Park Avenue Institutional Advisers LLC, Investment Company Act Release Nos. 32420 (Jan. 9, 2017) (notice) and 32468 (Feb. 6, 2017) (the “Manager of Managers Order”). After the Substitution Date (defined below), Park Avenue will not change a Replacement Portfolio’s sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order or any replacement order from the Commission with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio’s ability to rely on the Manager of Managers Order or any replacement order from the Commission, at a shareholder meeting, the record date for which will be after the proposed Substitution has been effected.

making those Replacement Portfolios appropriate candidates as substitutes. Information for each Existing Portfolio and Replacement Portfolio, including investment objectives, principal investment strategies, principal risks, and comparative performance history, can be found in the application.

9. Applicants state that for all the proposed Substitutions, the net annual operating expenses of the Replacement Portfolio will not exceed, on an annualized basis, the annual net operating expenses of any corresponding Existing Portfolio for the last fiscal year preceding the date of the application (the “Expense Cap”). Applicants will cause Park Avenue, as the investment adviser of each Replacement Portfolio, to enter into a written contract with the Replacement Portfolio under which the net annual operating expenses of the Replacement Portfolio will not exceed the Expense Cap. The Expense Cap for each proposed Substitution will remain in place for a period of two years following the implementation of the proposed Substitution (the “Substitution Date”), except that for those proposed Substitutions for which the sum of the current management fee and rule 12b-1 fees of the Replacement Portfolio is greater than that of the corresponding Existing Portfolio, the Expense Cap for that proposed Substitution will extend for the life of the affected Contracts following the Substitution Date. The Expense Cap applicable to Substitution No. 10 will also extend for the life of the affected Contracts following the Substitution Date. Any amounts waived or reimbursed by Park Avenue pursuant to any Expense Cap will not be subject to Park Avenue’s recoupment rights.

10. Applicants represent that as of the Substitution Date, the Separate Accounts will redeem shares of the Existing Portfolios for cash. Redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

11. Each Substitution will be effected at the relative net asset values of the

respective shares of the Replacement Portfolios in conformity with section 22(c) of the Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.<sup>3</sup>

12. Contract owners will not incur any fees or charges as a result of the proposed Substitutions. The obligations of Applicants and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way. Guardian and/or its affiliates (other than the Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution. In addition, the Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

13. From the date of the Pre-Substitution Notice (defined below) through 30 days following the Substitution Date, subject to the terms of certain Living Benefit Riders, Contract owners may make at least one transfer of Contract value from the subaccount investing in an Existing Portfolio (before the Substitution) or the Replacement Portfolio (after the

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<sup>3</sup> Applicants state that, because the Substitutions will occur at relative net asset value, and the fees and charges under the Contracts will not change as a result of the Substitutions, the benefits offered by the guarantees under the Contracts will be the same immediately before and after the Substitutions. Applicants also state that what effect the Substitutions may have on the value of the benefits offered by the Contract guarantees would depend, among other things, on the relative future performance of the Existing Portfolios and Replacement Portfolios, which Applicants cannot predict. Nevertheless, Applicants note that at the time of the Substitutions, the Contracts will offer a comparable variety of investment options with as broad a range of risk/return characteristics.



Substitution) to any other available subaccount under the Contract without charge and without imposing any transfer limitations. Further, on the Substitution Date, Contract values attributable to investments in each Existing Portfolio will be transferred to the corresponding Replacement Portfolio without charge and without being subject to any transfer limitations. Moreover, except with respect to market timing policies and procedures and the terms of the Living Benefit Riders, Guardian will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts for a period beginning at least 30 days, including limitations on the future number of transfers, before the Substitution Date through at least 30 days following the Substitution Date.

14. At least 30 days prior to the Substitution Date, Contract owners will be notified via prospectus supplements that Applicants received or expect to receive Commission approval of the applicable proposed Substitutions and of the anticipated Substitution Date (the “Pre-Substitution Notice”). Pre-Substitution Notices sent to Contract owners will be filed with the Commission pursuant to rule 497 under the 1933 Act. The Pre-Substitution Notice will advise Contract owners that from the date of the Pre-Substitution Notice through the date 30 days after the Substitutions, subject to the terms of certain Living Benefit Riders, Contract owners may make at least one transfer of Contract value from the subaccounts investing in the Existing Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available subaccount without charge and without imposing any transfer limitations. Among other information, the Pre-Substitution Notice will inform affected Contract owners that, except with respect to market timing policies and procedures and limitations imposed by Living Benefit Riders, Guardian will not exercise any rights reserved under the Contracts to impose additional restrictions on transfers out of a Replacement Portfolio subaccount from the

date of the Pre-Substitution Notice, including limitations on the future number of transfers, until at least 30 days after the Substitution Date. Additionally, all affected Contract owners will be sent prospectuses of the applicable Replacement Portfolios at least 30 days before the Substitution Date.

15. In addition to the Supplements distributed to the Contract owners, within five business days after the Substitution Date, Contract owners whose assets are allocated to a Replacement Portfolio as part of the proposed Substitutions will be sent a written notice (each, a “Confirmation”) informing them that the Substitutions were carried out as previously notified. The Confirmation also will restate the information set forth in the Pre-Substitution Notice. The Confirmation will also reflect the values of the Contract owner’s positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

#### Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(c) of the Act approving the proposed Substitutions. Section 26(c) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order from the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants submit that the Substitutions meet the standards set forth in section 26(c) and that, if implemented, the Substitutions would not raise any of the concerns that Congress intended to address when the Act was amended to include this provision. Applicants state that each Substitution protects the Contract owners who have Contract value allocated to an

Existing Portfolio by providing Replacement Portfolios with substantially similar investment objectives, strategies, and risks, and providing Contract owners with investment options that have net annual operating expenses that will not exceed the Expense Cap.

3. Guardian has reserved the right under the Contracts to substitute shares of another underlying fund for one of the current funds offered as an investment option under the Contracts. The Contracts and the Contracts' prospectuses disclose this right.

4. Applicants submit that the ultimate effect of the proposed Substitutions will be to streamline and simplify the investment line-ups that are available to Contract owners while reducing expenses and continuing to provide Contract owners with a wide array of investment options. Applicants state that the proposed Substitutions will not reduce in any manner the nature or quality of the available investment options and the proposed Substitutions also will permit Guardian to present information to its Contract owners in a simpler and more concise manner. Applicants also state it is anticipated that after the proposed Substitutions, Contract owners will be provided with disclosure documents that contain a simpler presentation of the available investment options under the Contracts. Applicants also assert that the proposed Substitutions are not of the type that section 26 was designed to prevent because they will not result in costly forced redemption, nor will they affect other aspects of the Contracts. In addition, the proposed Substitutions will not adversely affect any features or riders under the Contracts. Accordingly, no Contract owner will involuntarily lose his or her features or riders as a result of any proposed Substitution. Moreover, Applicants will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty (other than those necessary to implement policies and procedures designed to detect and deter disruptive transfers and other "market timing" activities and administer the terms of the Living

Benefit Riders) that may otherwise have been imposed for a period beginning on the date of the Pre-Substitution Notice (which supplement will be delivered to the Contract owners at least 30 days before the Substitution Date) and ending no earlier than 30 days after the Substitution Date. The proposed Substitutions are also unlike the type of substitution that section 26(c) was designed to prevent in that the Substitutions have no impact on other aspects of the Contracts.

5. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitutions will be effected without change in the amount or value of any Contract held by the affected Contract owners. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions. The fees and charges under the Contracts will not increase because of the Substitutions.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless Guardian determines that: (i) the Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (ii) the Substitutions can be consummated as described in the application under applicable insurance laws; and (iii) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. After the Substitution Date, Park Avenue will not change a Replacement Portfolio's sub-adviser, add a new sub-adviser, or otherwise rely on the Manager of Managers Order or any replacement order from the Commission with respect to any Replacement Portfolio without first obtaining shareholder approval of the change in sub-adviser, the new sub-adviser, or the Replacement Portfolio's ability to rely on the Manager of Managers Order, or any replacement order from the Commission, at a shareholder meeting, the record date for which shall be after the proposed Substitution has been effected.

3. Guardian or an affiliate thereof (other than the Trust) will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the affected Contract owners to effect the Substitutions. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitution than before the proposed Substitution.

4. The Substitutions will be effected at the relative net asset values of the respective shares of the Replacement Portfolios in conformity with section 22(c) of the Act and rule 22c-1 thereunder without the imposition of any transfer or similar charges by the Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by affected Contract owners.

5. The Substitutions will in no way alter the tax treatment of affected Contract owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

6. The obligations of the Applicants and the rights of the affected Contract owners, under the Contracts of affected Contract owners will not be altered in any way.

7. Affected Contract owners will be permitted to transfer Contract value from the subaccount investing in the Existing Portfolio (before the Substitution Date) or the Replacement Portfolio (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Contract owners with Living Benefit Riders, as applicable, may transfer Contract value from the subaccounts investing in the Existing Portfolios (before the Substitutions) or the Replacement Portfolios (after the Substitutions) to any other available investment option available under their respective riders without charge and without imposing any transfer limitations. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Applicants will not exercise any rights reserved under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, transfers, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

8. All affected Contract owners will be notified via the Pre-Substitution Notice, at least 30 days before the Substitution Date, about: (i) the intended Substitution of Existing Portfolios with the Replacement Portfolios; (ii) the intended Substitution Date; and (iii) information with respect to transfers as set forth in Condition 7 above. In addition, the Applicants will also deliver to affected Contract owners, at least 30 days before the Substitution Date, a prospectus for each applicable Replacement Portfolio.

9. The Applicants will deliver to each affected Contract owner within five business days of the Substitution Date a written confirmation which will include: (i) a confirmation that the Substitutions were carried out as previously notified; (ii) a restatement of the information set

forth in the Pre-Substitution Notice; and (iii) values of the Contract owner's positions in the Existing Portfolio before the Substitution and the Replacement Portfolio after the Substitution.

10. Guardian will cause Park Avenue, as the investment adviser of each Replacement Portfolio, to enter into a written contract with the Replacement Portfolio whereby the net annual operating expenses of the Replacement Portfolio will not exceed the Expense Cap. The Expense Cap for each proposed Substitution will remain in place for a period of two years following the Substitution Date. For those proposed Substitutions for which the sum of the current management fee and rule 12b-1 fees of the Replacement Portfolio is greater than that of the corresponding Existing Portfolio, the Expense Cap for that proposed Substitution will extend for the life of the affected Contracts following the Substitution Date. The Expense Cap applicable to Substitution No. 10 will also extend for the life of the affected Contracts following the Substitution Date.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman  
Assistant Secretary