

1, 2002, an order was issued to American Enterprise Life Insurance Company, *et al.* (Release No. IC-25561) (the "May 1 Order"). Applicants note that the Amended Service Fee Representation is consistent with the corresponding representation made in the exemptive application filed by American Enterprise Life Insurance Company, *et al.*

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(c) is both to protect the expectations of investors that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves the substitution.

2. By approving the April 30 Order, the Commission determined that the Substitution was "consistent with the protection of the investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicants submit that the amended order also will meet this standard. Applicants submit that the requested amendment is appropriate and in the public interest, and that the interests of fairness require that the April 30 Order be amended to be no more restrictive than the relief granted other parties in the same circumstances.

3. Applicants submit that a restriction of the type in the April 30 Order is less necessary in the context of a liquidation. Applicants submit that in this situation, the need for a substitution is forced on the insurer and is not a product of the insurer's independent business planning. Accordingly, Applicants argue, it is less likely that an improper or self-interested motive has prompted the insurer's action, and it should not be presumed that a prophylactic measure like the Service Fee Representation is necessary. Moreover, Applicants believe

that because the Amended Service Fee Representation directly and fully denies the existence of any financial incentive from the Replacement Fund or its affiliates, the broad restriction imposed by the existing Service Fee Representation is wholly unnecessary.

4. Second, Applicants submit that the existing Service Fee Representation places a significant burden on assets that are entirely unrelated to the Substitution. Applicants state that because the Replaced Fund was not popular among investors, only a few Contracts and a small amount of Applicants' subaccount assets were invested in the Replaced Fund. On the other hand, a significant amount of subaccount assets were invested in the Replacement Fund, which was an existing investment option under the Contracts. Applicants submit that in the absence of the Substitution, the service fee rate was set and could be changed as a product of arm's length bargaining between Applicants and the Replacement Fund's adviser. Applicants submit that it is unfair to impose an artificial restriction on Applicants' negotiating posture with respect to all service fees for all of those assets, as well as assets relating to new product developments entirely unrelated to the Substitution, because of a substitution that was compelled by circumstances beyond Applicants' control.

5. Applicants also argue that imposing the restriction in the existing Service Fee Representation may discourage insurers in some circumstances from selecting the most appropriate replacement fund in future substitutions. Applicants argue that limiting service fees with respect to all other funds in a replacement fund's fund complex creates an incentive for insurers to effect substitutions only with members of fund families in which the insurer does not already invest, and that this incentive may conflict with the interests of investors.

6. Applicants submit that fairness requires that the Service Fee Representation be amended to conform with the representation on which the May 1 Order was based. Applicants submit that the circumstances there were identical in all material respects with the circumstances presented by this substitution. Applicants state that both cases involved the liquidation of an unaffiliated fund for reasons unrelated to the affected insurers and the substitution into another unaffiliated fund. Applicants submit that by granting the May 1 Order, the Commission determined that a representation such as the Amended Service Fee Representation was in the

public interest in circumstances involving a substitution prompted by liquidation of an unaffiliated fund. Given the similarity of the two cases, Applicants submit that here also, the proposed change in the Service Fee Representation would be fair and in the public interest.

7. Applicants submit that, for the reasons summarized above, their request meets the standards set out in Section 26(c) of the 1940 Act. Accordingly, Applicants request an order, pursuant to Section 26(c) of the 1940 Act, amending the April 30 Order as requested above.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-25959; File No. 812-12828]

Allianz Life Insurance Company of North America, et al.

March 14, 2003.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Allianz Life Insurance Company of North America ("Allianz Life"), Allianz Life Variable Account A ("Allianz Account A"), Allianz Life Variable Account B ("Allianz Account B"), Allianz Life Insurance Company of New York ("Allianz Life of NY") and Allianz Life of NY Variable Account C ("Allianz Account C"). Allianz Life and Allianz Life of NY are collectively referred to as the "Insurance Company Applicants." Allianz Account A, Allianz Account B and Allianz Account C are collectively referred to as the "Separate Account Applicants."

FILING DATE: The application was filed on May 20, 2002, and amended and restated on August 6, 2002, December 16, 2002, March 7, 2003 and March 13, 2003.

SUMMARY OF APPLICATION: Applicants request an order of approval to permit the substitution of shares of The Dreyfus Stock Index Fund ("Dreyfus Fund") for shares of Franklin Templeton Variable Insurance Products Trust's (the "Trust's") Franklin S&P 500 Index Fund ("Franklin Fund") (the "Substitution").