

breaching its Net Debit Cap or having insufficient collateral in the event of a reversal caused by an RTP. However, withholding the credits makes them unavailable to the Participant, which can cause blockage (*i.e.*, the failure of a transaction to process because of insufficient liquidity) for the Participant. Meanwhile, the RVPNA Control limits a Participant's ability to deliver MMI that the Participant is due to receive that day. By preventing Participants from delivering certain MMI securities, the RVPNA Control also can create blockage.

Because DTC would no longer process MMI transactions without a purchaser's RAD authorization and an IPA's MMI funding acknowledgement, as applicable, RTPs and resulting intraday reversals no longer present the risk that the LPNC and RVPNA Controls are meant to address. As such, DTC would eliminate these controls. This change would make available to Participants the intraday credits that were previously withheld by those controls, which would decrease intraday liquidity blockage for the Participant and enable DTC to process MMI transactions earlier. Thus, Participants would have less exposure to intraday reversals that increase liquidity and settlement risk and a more complete view of their actual intraday net debit and credit balances.

The Commission also believes that the Proposed Rule Change is consistent with protecting investors and the public interest. As described above, DTC would no longer automatically process MMI presentments. Rather, DTC would require purchasers to authorize delivery via RAD and IPAs to provide a funding acknowledgment before processing MMI presentments, as applicable. Because these changes would eliminate the risk of reversals due to an RTP, the changes would mitigate the risk of a potential override of DTC's risk management controls. Thus, the Proposed Rule Change would help protect investors and the public interest by reducing DTC's exposure to potential failures, promoting DTC's safety and soundness, and providing greater assurance that transactions will settle despite a Participant default.

Therefore, for the above reasons, the Commission believes that the Proposed Rule Change will help promote the prompt and accurate clearance and settlement of securities transactions and help protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act, cited above.

B. Consistency With Rule 17Ad-22(d)(12)

Rule 17Ad-22(d)(12) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day; and require that intraday or real-time finality be provided where necessary to reduce risks.¹⁸ Through this proposal, DTC would no longer process MMI transactions automatically but, rather, would first require an IPA's funding acknowledgment and a purchaser's RAD authorization, as applicable. Where such acknowledgements and authorizations are provided, DTC would no longer permit an RTP, thus eliminating the risk of an intraday reversal of a processed MMI transaction. Additionally, the proposal would eliminate the LPNC and RVPNA Controls, which would help eliminate blockage caused by the LPNC Control's withholding of Participants' two largest net credits for MMI transactions and the RVPNA Control's restriction on delivering certain MMI securities. Each of these proposed changes, both individually and collectively, would help ensure that final settlement occurs at the end of the day. Therefore, the Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad-22(d)(12) under the Act.¹⁹

III. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act²⁰ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR-DTC-2016-008 be, and hereby is, *Approved* as of the date of this order or the date of a notice by the Commission authorizing DTC to implement DTC's advance notice proposal (SR-DTC-2016-802) that is consistent with this Proposed Rule Change, whichever is later.²¹

¹⁸ 17 CFR 240.17Ad-22(d)(12).

¹⁹ *Id.*

²⁰ 15 U.S.C. 78q-1.

²¹ In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79762; File No. SR-BatsBZX-2016-90]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for Connectivity and Its Communication and Routing Service Known as Bats Connect

January 9, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 27, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c) to modify its fees for its equity options platform ("BZX Options") for physical ports and for the use of a communication and routing service known as Bats Connect.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

The text of the proposed rule change is available at the Exchange's Web site at www.bats.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fee schedule for BZX Options to modify its fees for physical ports and for the use of a communication and routing service known as Bats Connect. Each of these proposed changes are described below.

Physical Ports

A physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is

predominantly maintained for business continuity purposes. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: 2,000 per physical port that connects to the System⁶ via 1 gigabyte circuit; and 4,000 per physical port that connects to the System via 10 gigabyte circuit. The Exchange proposes to increase the fee per physical port that connects to the System via a 10 gigabyte circuit from 4,000 per month to 6,000 per month in order cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems and enable it to continue to maintain and improve its market technology and services. The Exchange does not propose to amend the fee for a 1 gigabyte circuit, which will remain \$2,000 per month.

Bats Connect

The Exchange proposes to increase select fees related to the use of Bats Connect. Bats Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor.⁷ In sum, Bats Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. Bats Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates⁸ as compared to other methods of connectivity. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to Bats Connect. Subscribers may also seek to utilize Bats Connect in the event of a market disruption where other alternative

connection methods become unavailable.

The Exchange charges a monthly connectivity fee to subscribers utilizing Bats Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network via unicast access. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, as set forth under the Unicast Access—Order Entry section of the fee schedule, the Exchange charges \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb. The Exchange proposes to increase those fees as follows: \$500 for 1 Mb, \$1,000 for 5 Mb, and \$1,250 for 10 Mb. The proposed increases are designed to cover increased costs related to hardware, installation, and testing, as well as increased expenses involved in maintaining and managing the service. The Exchange does not propose to increase the fees for the 25 Mb, 50 Mb and 100 Mb connections as those fees will remain \$1,500, \$2,500, and \$3,500, respectively.

Bats Connect also allows subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber pays the Exchange a connectivity fee, which are set forth under the Market Data Connectivity section of the fee schedule and vary based solely on the amount of bandwidth required to transmit the selected data product to the subscriber.⁹ The proposed connectivity fees currently range from no charge to \$11,500 based on the market data product the subscriber selects. The Exchange proposes to increase select connectivity fees for market data as follows:

Data feed	Current fee	Proposed fee
UQDF/UTDF/OMDF	\$650	\$1,200
CQS/CTS	1,000	1,400
OPRA	3,500	4,500
Nasdaq TotalView	1,300	1,500
Nasdaq BX TotalView	650	1,000
Nasdaq PSX TotalView	350	750
NYSE Integrated	11,500	14,500
NYSE ArcaBook	1,000	1,250
NYSE MKT OpenBook Ultra	150	500
NYSE Alerts	250	500
NYSE Imbalances	100	500
NYSE Arca Trades	250	500
BBDS/TDDS	100	500

⁶ The term "System" is defined as "the automated trading system used by BZX Options for the trading of options contracts." See Exchange Rule 16.1(a)(59).

⁷ See Exchange Rule 13.8.

⁸ The Exchange's affiliated exchanges are Bats EDGX Exchange, Inc. ("EDGX"), Bats EDGA Exchange, Inc. ("EDGA"), and Bats BYX Exchange, Inc. ("BYX").

⁹ Subscribers pays any fees charged by the exchange providing the market data feed directly to that exchange.

The proposed increases are designed to allow the Exchange to cover the increased costs related to the amount of bandwidth required to provide connectivity to receive market data as well as the costs of maintaining that infrastructure.

The Exchange also charges a discounted fee of \$4,160 per month for subscribers who purchase connectivity to a bundle of select market data products, known as the U.S. Equities Select + SIP Bundle. The following market data products are included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBDS/TTDS.¹⁰ Absent the discount, a subscriber purchasing connectivity through Bats Connect for each of these market data products would currently pay a total monthly fee of \$5,200. Instead, a subscriber who purchases connectivity to each of the above market data products is charged a monthly fee of \$4,160, which represents a 20% discount. The Exchange proposes to add NYSE OpenBook Ultra to the bundle. Also, in light of the proposed changes outlined above, the Exchange proposes to increase the discounted rate of the bundle to \$5,910 per month, which would now represent a 40% discount from the rate of \$9,850 a subscriber purchasing connectivity through Bats Connect for each of these market data products would be charged under the proposed rule change.

Lastly, the Exchange proposes to charge a discounted fee of \$6,390 per month for subscribers who purchase connectivity to the OPRA, UQDF/UTDF/OMDF, and CQS/CTS data feeds. Absent the discount, a subscriber purchasing connectivity through Bats Connect for each of these market data products would pay a total monthly fee of \$7,100. Instead, a subscriber who purchases connectivity to each of the above market data products is charged a monthly fee of \$6,390, which represents a 10% discount.

Implementation Date

The Exchange proposes to implement this amendment to its fee schedule on January 3, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹

¹⁰ The Exchange also proposes to correct a typographical error in referencing BBDS/TDDS in its description of the U.S. Equity Select + SIP bundle.

¹¹ 15 U.S.C. 78f.

in general, and furthers the objectives of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected Members and non-Members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Furthermore, the proposed rule change is also an equitable allocation of reasonable dues, fees, and other charges as the Exchange believes that the increased fees obtained will enable it to cover its increased infrastructure costs associated with establishing physical ports to connect to the Exchange's Systems. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services.

Physical Ports

The Exchange believes that the proposed fees for a 10 gigabyte circuit

¹² 15 U.S.C. 78f(b)(4).

of \$6,000 per month is reasonable in that they are less than analogous fees charged by the Nasdaq Stock Market LLC ("Nasdaq") and NYSE Arca, Inc. ("Arca"), which range from \$10,000–\$15,000 per month for 10 gigabyte circuits.¹³ The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members and non-Members. Members and non-Members will continue to choose whether they want more than one physical port and choose the method of connectivity based on their specific needs. All Exchange Members that voluntarily select various service options will be charged the same amount for the same services. As is true of all physical connectivity, all Members and non-Members have the option to select any connectivity option, and there is no differentiation with regard to the fees charged for the service.

Bats Connect

The Exchange also believes that its proposed fees for Bats Connect provide for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange charges a connectivity fee to subscribers utilizing Bats Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. The proposed increased connectivity fees remain reasonable and competitive as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to now charge \$500 for 1 Mb, \$1,000 for 5 Mb, and \$1,250 for 10 Mb. The New York Stock Exchange, Inc. ("NYSE") currently charges \$300 for 1 Mb, \$700 for 5 Mb, and \$900 for 10 Mb.¹⁴ In addition, the proposed rates continue to be less than what a subscriber would pay to connect directly to another exchange.¹⁵ The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the

¹³ See Nasdaq Rule 7034(b) and the Co-Location section of the NYSE Arca fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (dated December 2, 2016).

¹⁴ See Section 3.6.1 of NYSE's SFTI Americas Product and Service List available at <http://www.nyxdata.com/docs/connectivity>.

¹⁵ See e.g., Nasdaq Rule 7034(b) and the NYSE Arca fee schedule available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (dated December 2, 2016).

Exchange is similar to that charged by the NYSE.

Second, with regard to utilizing Bats Connect to receive market data products from other exchanges, the Exchange only charges subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers. The Exchange believes it is necessary to increase the rates for select market data feeds as described herein to address changes in bandwidth necessary to receive such feeds. The increased fees will also enable the Exchange to continue to cover the increased infrastructure costs while also enabling it to continue to maintain and improve the service.

The amounts of the connectivity fees continue to be reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, Nasdaq charges \$1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge \$1,400 per month connectivity for CQS/CTS data feed.¹⁶

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. The Exchange is not required by any rule or regulation to make Bats Connect available; nor are subscribers required by any rule or regulation to utilize Bats Connect. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

Lastly, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to

connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Further, excessive fees for connectivity would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

Lastly, the Exchange does not believe the proposed fees for Bats Connect will result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. Bats Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule

19b-4 thereunder.¹⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2016-90. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

¹⁶ See Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

available publicly. All submissions should refer to File Number SR–BatsBZX–2016–90 and should be submitted on or before February 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–00611 Filed 1–12–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32420; 812–14627]

Guardian Variable Products Trust and Park Avenue Institutional Advisers LLC; Notice of Application

January 9, 2017.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Guardian Variable Products Trust (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each, a “Subadvised Series”), and Park Avenue Institutional Advisers LLC, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the “Adviser,” and, together with the Trust, the “Applicants”).

FILING DATES: The application was filed March 16, 2016, and amended on September 8, 2016.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission’s Secretary and serving 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 3, 2017, 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Richard T. Potter, The Guardian Life Insurance Company of America, Law Department, H–23–G, Suite 300, 7 Hanover Square, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Kyle R. Ahlgren, Senior Counsel, at (202) 551–6857, or Holly L. Hunter-Ceci, 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 an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to the Subadvised Series pursuant to an investment management agreement with the Trust (the “Investment Management Agreement”).¹ The Adviser will provide the Subadvised Series with continuous investment management subject to the supervision of the Trust’s board of trustees (the “Board”). The Investment Management Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a “Sub-Adviser” and collectively, the “Sub-Advisers”) the responsibility to provide the day-to-day portfolio investment management of each Subadvised Series, subject to the supervision and direction of the

¹ Applicants request relief with respect to the Applicants, any existing or future series of the Trust (the “Series”), and any Subadvised Series. For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

Adviser. The primary responsibility for managing the Subadvised Series will remain vested in the Adviser. The Adviser will evaluate, allocate assets to and oversee the Sub-Advisers, and make recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to select certain Sub-Advisers² pursuant to sub-advisory agreements (each, a “Sub-Advisory Agreement” and collectively, the Sub-Advisory Agreements”) and materially amend Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act. Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series’ net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, “Aggregate Fee Disclosure”).

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series’ shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of Subadvised Series’ shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes

² The requested relief will extend to certain advisers that meet the definition of “wholly-owned subsidiary” in section 2(a)(43) of the Act (“Wholly-Owned Sub-Advisers”) and certain other advisers that are not “affiliated persons” (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as sub-adviser to one or more Series (each, a “Non-Affiliated Sub-Adviser” and collectively, the “Non-Affiliated Sub-Advisers”). The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an “affiliated person” (as such term is defined in section 2(a)(3) of the 1940 Act) of the Subadvised Series or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (each, an “Affiliated Sub-Adviser” and collectively, the “Affiliated Sub-Advisers”).

¹⁹ 17 CFR 200.30–3(a)(12).