UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
INVESTMENT MANAGEMENT

October 17, 2019

VIA ELECTRONIC MAIL

RESPONSE OF CHIEF ACCOUNTANT'S OFFICE
DIVISION OF INVESTMENT MANAGEMENT

Stephen E. Roth
Eversheds Sutherland (US) LLP
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Re: Nationwide Life Insurance Company

By letter dated October 16, 2019, you request authority under Regulation S-X §3-13 ("Rule 3-13") for Nationwide Life Insurance Company ("Company") to file audited financial statements of the Company prepared in accordance with statutory accounting principles[1] ("SAP"), in place of financial statements prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"), in registration statements filed under the Securities Act of 1933 ("Securities Act") on Form S-1 for certain insurance contracts currently issued by the Company, specifically, contracts with market value adjustment features, contingent deferred annuity contracts, and index-linked annuity contracts that the Company intends to issue (collectively, "Contracts"), in satisfaction of the requirements of Items 11(e), 11(f) and 11(g) and Item 16(b) of Form S-1, as described in your letter.

Background

The Company

You state that the Company is an insurance company organized in Ohio that is principally engaged in selling life insurance, annuities and retirement products. You also state that the Company is a member of a group of companies ultimately controlled by Nationwide Mutual Insurance Company ("NMIC") and Nationwide Mutual Fire Insurance Company (together with NMIC, the "Mutual Companies"). Specifically, you state that the Company is a wholly owned

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1 You note that these principles are those that are prescribed or permitted by the Company's domiciliary state regulator.

subsidiary of Nationwide Financial Services ("NFS"), which is an indirect wholly-owned subsidiary of the Mutual Companies.

You state that the Mutual Companies provide GAAP financial statements on a combined basis to their shared board of directors. You also state that NFS, as a private company, is not required by federal securities laws to prepare GAAP financial statements, but it does provide consolidated GAAP financial statements to its noteholders. You state that, in preparing these statements, NFS uses GAAP financial information provided by its subsidiaries, including the Company, and that the Mutual Company uses GAAP financial information provided by their subsidiaries, including NFS.

You also state, however, that none of the Company's direct or indirect parents require their respective subsidiaries to provide audited GAAP financial statements, or to prepare a GAAP reporting package or partial GAAP financial statements, in connection with the preparation of the Mutual Companies' combined GAAP financial statements or NFS' consolidated GAAP financial statements. In this regard, you state that that the Mutual Companies and NFS each manage their business operations through operating segments rather than through a legal entity approach. Specifically, you note that the operating segments are defined by type of business and represent the combination of operations of their respective subsidiaries, and that a single subsidiary can conduct business activities in multiple operating segments. You note that the Mutual Companies and NFS prepare and manage their respective combined and consolidated financial information by aggregating financial information for each operating segment recorded across multiple legal entities (*i.e.*, their respective subsidiaries).

You state that the Company does not issue or have outstanding any publicly traded equity securities, nor has it issued any publicly traded debt securities. In addition, as noted above, you assert that the GAAP financial information related to the Company's operations that would otherwise be prepared for use by its direct and indirect parents would not constitute GAAP financial statements, partial GAAP financial statements, or a GAAP reporting package. You state that the only reason the Company would prepare GAAP financial statements is for use in the registration statements on Form S-1 for its Contracts. In this regard, you note that Forms N-4 and N-6 under the Investment Company Act of 1940, on which the Company and its subsidiaries register their respective variable insurance products, each would permit the Company to file audited SAP financial statements if it would not otherwise have to prepare GAAP financial statements in connection with the Form S-1 filings for its Contracts.[2]

You also state that the Company relies on relief provided by Rule 12h-7 under the Securities Exchange Act of 1934 ("Exchange Act") for relief from the requirement to file

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2 *See* Form N-4 Item 23(b), Instruction 1, and Form N-6 Item 24(b), Instruction 1.

periodic reports under that Act.[3] In this regard, you note that the Company is subject to supervision by the Insurance Commission of the State of Ohio. In addition, you state that the Company files a statement of its annual condition with, is supervised by, and has its financial condition periodically examined by, the Insurance Commission of the State of Ohio.[4] Further, you state that the Company must prepare SAP financial statements, which are audited by an independent auditor,[5] for filing with the domiciliary state insurance regulator and the National Association of Insurance Commissioners.

The Contracts

You state that the Contracts the Company currently offers are standalone annuity Contracts with market value adjustment ("MVA") features and combination contracts that offer both non variable market value adjusted investment options as well as variable account investment options. You also state that these standalone Contracts with MVA features and nonvariable market value adjusted investment options provide a specified and fixed interest rate over specified terms (each a "specified period") as long as amounts are not withdrawn before the end of the specified period.

You state that withdrawals or transfers from a nonvariable market value adjusted investment option or from a standalone Contract before the end of the specified period for any reason other than payment of a death benefit are subject to an MVA. You also state that MVAs are used to protect the Company from the risk that contract reserves will have to be sold at a discount to satisfy the Company's obligations to pay the surrender or withdrawal. In this regard, you note that, generally, if prevailing interest rates are higher at the time of withdrawal or transfer than when the Contract was purchased, a negative MVA will apply with the result that the owner may lose principal.

Under the contingent deferred annuity Contracts for which the Company requests authority under Rule 3-13, you state that the Company promises to pay the contract owner or spouse if a spousal continuation option has been elected (each a "Covered Person") lifetime

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3 Rule 12h-7 exempts insurance companies from filing Exchange Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the Securities Act if certain other conditions are satisfied. 17 C.F.R. §240.12h-7 (2018).

4 Rule 12h-7(a) and (c) specify that an issuer qualifying under that rule is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State (as defined in the Exchange Act); and files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State (as defined in that Act). *Id.*

5 You state that the financial statements filed in registration statements for the Contracts will be audited by an auditor that will satisfy the independence standards of Article 2 of Regulation S-X and be registered with and subject to inspection by the Public Company Accounting and Oversight Board.

income payments based on the contract owner's direct investment in mutual funds and managed accounts available through an investment advisory program. You state that the Company promises to make these payments regardless of how long the Covered Person lives or the actual performance or value of these investments, provided all conditions of the Contract are satisfied.

You state that when the Contract owner is eligible to take withdrawals, those withdrawals reduce the value of these investments, and if that value falls below a certain amount (or the owner lives to a certain age or on the owner's election during this period), the Company will make fixed annuity payments to the Covered Person for the life of that person.

As to the indexed-linked annuity Contracts the Company intends to issue, you state that these Contracts can be either standalone index-linked annuity Contracts, or combination contracts that offer variable investment options as well as registered index-linked investment options. You also state that owners of the Contracts will be able to select among a set of interest crediting options that are each linked to the performance of different securities indices.

You state that these interest crediting options will offer several different protection features, including "floors" that establish the maximum negative market performance to which the contract owner will be exposed in a specified period. You also state that proceeds payable to an owner of a Contract who makes a withdrawal from the Contract or surrenders the Contract before the end of a strategy's term end date will be adjusted according to a prescribed formula.

You state that the Contracts will not constitute equity interests in the issuer and would be subject to regulation under the insurance laws of the State of Ohio. In addition, you state that the Contracts will not be not listed, traded or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting.[6]

Discussion

You note Rule 3-13 provides that the Commission "may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements required by Regulation S-X or the filing in substitution therefor of appropriate statements of comparable character." You assert that, for the Form S-1 registration statements of its Contracts, SAP financial statements that have been

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6 Rule 12h-7(b) specifies that the securities that would otherwise trigger Exchange Act reporting obligations must not constitute an equity interest in the issuer, and must either be securities subject to regulation under the insurance laws of the domiciliary State of the issuer or guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction. *Id.* Rule 12h-7(d) further requires that those securities must not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting. *Id.*

audited by an independent auditor are appropriate statements of a comparable character to GAAP financial statements.

In support of this claim, you assert that, similar to investors in variable annuity contracts, whose insurance benefits offered by the insurer depend on the insurer's solvency, investors in the Contracts will be most interested in information relevant to assessing the Company's ability to fulfill its contractual obligations.[7] You assert that SAP financial statements would provide investors in its Contracts with sufficient information to assess the Company's solvency and its ability to fulfill its contractual obligations.[8]

In this regard, you claim that SAP financial statements contain detailed information about an insurance company's balance sheet including its regulatory capital and surplus, which serve as financial cushions for paying policyholder claims. In addition, you assert that SAP financial statements enable regulators to determine the Company's ability to meet its obligations to owners of the Contracts based on the availability of readily marketable assets when obligations are due.

Based on the facts and representations set forth in your letter as summarized above, as well as the conditions outlined above, and without necessarily agreeing with all of your analysis, your request for permission under Rule 3-13 for the Company to file SAP financial statements, audited by an independent auditor, in lieu of GAAP financial statements in registration statements filed for the Contracts on Form S-1, as it relates to the accounting basis of those financial statements only and as described above, is granted. [9] [10]

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7 You note the Commission recognized, in proposing variable annuity registration forms, that investors in those products may only be interested in the solvency of the account depositor with respect to the insurance benefits offered in those products by the depositor. *Registration Form for Insurance Company Separate Accounts that Offer Variable Annuity Contracts*, Securities Act Release No. 33-6502 and Investment Company Act Release No. 13689 (December 22, 1983).

8 You also note that, while the use of GAAP assists investors in understanding an issuer's going concern value, investors in the Contracts do not need information regarding the Company's *going concern* value since there is no secondary market in the Contracts.

9 The staff notes that it would be receptive to considering applications under Rule 3-13 from other registrants seeking to file SAP financial statements in lieu of GAAP financial statements in registration statements filed for products similar to the Contracts described here, under circumstances similar to those described above.

10 Our analysis underlying this assurance has been developed in consultation with the staff of the Commission's Office of the Chief Accountant.

If you have any questions regarding this letter, please call the Chief Accountant's Office of the Division of Investment Management at (202) 551-6918.

Sincerely,

Alison Staloch
Chief Accountant
Division of Investment Management

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

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October 16, 2019

Via EDGAR
Ms. Alison Staloch
U.S. Securities and Exchange Commission
Division of Investment Management
100 F Street, NE
Washington, DC 20549

Re: Nationwide Life Insurance Company

Dear Ms. Staloch:

I am writing on behalf of Nationwide Life Insurance Company ("Nationwide Life") to request that, pursuant to Rule 3-13 of Regulation S-X, the staff of the Division of Investment Management ("Staff") permit Nationwide Life to file audited financial statements prepared in accordance with statutory accounting principles ("SAP") prescribed or permitted by its domiciliary state regulator in place of financial statements prepared in accordance with accounting principles generally accepted in the United States ("GAAP") in registration statements filed on Form S-1—for certain insurance contracts currently issued by Nationwide Life, specifically contracts with market value adjustment features and contingent deferred annuity contracts, as well as index-linked annuity contracts that Nationwide Life intends to issue (collectively, "Contracts")—in satisfaction of the financial information required by Form S-1, including the requirements of Items 11(e), 11(f), 11(g), and 16(b) of the Form.

Nationwide Life believes that SAP financial statements will provide investors in its Contracts with sufficient information to assess Nationwide Life's ability to meet its obligations under those Contracts, and that filing SAP financial statements in place of GAAP financial statements would be consistent with investor protection. Forms N-3, N-4 and N-6 already permit insurers to use SAP financial statements in registration statements for variable insurance products registered on those forms. That relief is intended to reduce the burden on insurance companies that otherwise would prepare GAAP financial statements solely to register variable insurance products. Because of the significant costs and administrative burdens associated with preparing GAAP financial statements, the relief permitting use of SAP financial statements in Forms N-3, N-4, and N-6 serves as a precedent for allowing the use of SAP financial statements in the Form S-1 registration statements that Nationwide Life would file for its Contracts.

Furthermore, the time and cost burden of preparing GAAP financial statements only for insurance products that must be registered on Form S-1 impedes many insurance companies from offering those products. Reducing this burden will likely facilitate entry into the marketplace for such products by more insurance companies, and increase the choices available to investors among such products for retirement and other long term purposes.

Background

Nationwide Life

Nationwide Life is a stock life insurance company organized under Ohio law in March 1929 that is principally engaged in selling life insurance, annuities and retirement products. It is admitted to do business in all states, the District of Columbia, Guam, the U.S. Virgin Islands, and Puerto Rico.

Nationwide Life is a member of the Nationwide group of companies. The ultimate controlling persons of the Nationwide group of companies, Nationwide Mutual Insurance Company ("NMIC") and Nationwide Mutual Fire Insurance Company ("NMFIC"), are mutual insurance companies that were organized under Ohio law in December of 1925 and 1933, respectively. NMIC and NMFIC (collectively, "the Mutual Companies") engage in a general insurance and reinsurance business, except life insurance. Nationwide Life is a wholly owned subsidiary of Nationwide Financial Services, Inc. ("NFS"); NFS is an indirect wholly owned subsidiary of the Mutual Companies.

As a private company, NFS does not have securities being offered or sold pursuant to the Securities Act of 1933, as amended ("1933 Act"); nor does it file reports with the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended ("1934 Act"). Although not required by federal securities laws to prepare GAAP financial statements, NFS prepares consolidated GAAP financial statements for its noteholders, and utilizes limited GAAP-based information—including balance sheet information and income statement information relevant to each of its operating segments (described more fully below)—from its subsidiaries (including Nationwide Life) to prepare those financial statements and the consolidated GAAP-based information that it provides to its ultimate parents, the Mutual Companies. Likewise, although not required by federal securities laws to prepare GAAP financial statements,[1] NMIC and NMFIC prepare GAAP financial statements on a combined basis, and utilize GAAP-based information from their subsidiaries—including NFS—to prepare the combined GAAP financial statements that are provided to their shared board of directors.

The Mutual Companies and NFS each manage their business operations through operating segments rather than through a legal entity approach. The operating segments are defined by type of business and represent the combination of operations of their respective subsidiaries. A single subsidiary can conduct business activities in multiple operating segments. The Mutual Companies and NFS prepare and manage their respective combined and consolidated financial information by aggregating financial information for each operating segment recorded across multiple legal entities (i.e., their respective subsidiaries). Although the Mutual Companies prepare combined GAAP financial statements and NFS prepares consolidated GAAP financial statements, none of Nationwide Life's direct or indirect parents require their respective subsidiaries to provide audited GAAP financial statements, or to prepare a GAAP reporting package or partial GAAP financial statements, in connection with the preparation of their respective combined (for the Mutual Companies) or consolidated (for NFS) GAAP financial statements.

As an Ohio-based insurance company, Nationwide Life must prepare SAP financial statements, which are audited by an independent auditor, for filing with the domiciliary state insurance regulator and the National Association of Insurance Commissioners. State regulators review the financial statements as part of a comprehensive regulatory program that focuses on Nationwide Life's solvency, with the goal of ensuring that Nationwide Life can fulfill its contractual obligations to policyholders. The ultimate objective of state solvency regulation is to ensure that the insurance company can pay policyholder liabilities when they come due and that the insurance company maintains capital and surplus at all times in such forms as required by state law to provide a margin of safety. With the objective of solvency regulation, statutory accounting principles focus on the insurance company's balance sheet and emphasize Nationwide Life's liquidity.

Nationwide Life does not issue or have outstanding any publicly traded equity securities (i.e., common stock or preferred stock); nor has it issued any publicly traded debt securities. Moreover, as noted above, the GAAP-based information related to Nationwide Life's operations

[1] NMIC and NMFIC are required to prepare SAP financial statements for filing with state insurance regulators.

that would otherwise be prepared for use by its direct and indirect parents would not constitute GAAP financial statements, partial GAAP financial statements, or a GAAP reporting package. The only reason that Nationwide Life currently prepares GAAP financial statements is for use in the Form S-1 registration statements for its Contracts. Forms N-4 and N-6 under the Investment Company Act of 1940, on which Nationwide Life (and its subsidiaries) register their respective variable insurance products, each would permit Nationwide Life to file audited SAP financial statements if it would not otherwise have to prepare GAAP financial statements in connection with the Form S-1 registration statements for its Contracts.[2]

Nationwide Life relies on Rule 12h-7 under the 1934 Act[3] for relief from the requirement to file periodic reports under that Act. As required as a condition of eligibility for Rule 12h-7, Nationwide Life is subject to supervision by the Insurance Commission of the State of Ohio. Nationwide Life files a statement of its annual condition with, is supervised by, and its financial condition is periodically examined by, the Insurance Commissioner of the State of Ohio. In addition, the only SEC-registered securities that Nationwide Life currently issues or intends to issue are insurance contracts (i.e., the Contracts) that are subject to regulation under Ohio insurance laws. Those securities do not and will not constitute an equity interest in Nationwide Life, and are not and will not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any other similar system, network, or publication for trading or quoting.

The Contracts

- *Contracts with MVA Features*

  Nationwide Life currently offers standalone annuity contracts with market value adjustment ("MVA") features,[4] and registered combination contracts that offer non-variable market value adjusted investment options ("GTOs") as well as variable account investment options[5]. These standalone Contracts and GTOs provide a specified, fixed interest rate over specified terms (each a "specified period"), as long as amounts invested are not withdrawn before the end of the specified period. A different interest rate applies to each specified period made available. Nationwide Life decides, at its discretion, which specified periods and what specified interest rates to offer.

  Withdrawals or transfers from either a standalone Contract or a GTO before the expiration of the specified period, that are made for any reason other than payment of a death benefit, are subject to an MVA and may also be subject to a contingent deferred sales charge. The MVA—which can be positive or negative, depending on changes in interest rates—is calculated pursuant to a formula specified in the Contract.[6]

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[2] *See* Form N-4 Item 23(b), Instruction 1, and Form N-6 Item 24(b), Instruction 1.

If this request to file audited SAP financial statements in place of GAAP financial statements in registration statements filed on Form S-1 (for the Contracts) is granted, Nationwide Life also intends to include SAP financial statements in the registration statements for its variable insurance products, as permitted under Forms N-4 and N-6.

[3] 17 CFR 240.12h-7 (exempting insurance companies from filing 1934 Act reports with respect to certain specified types of securities that are subject to state insurance regulation and are registered under the 1933 Act, provided that certain conditions are met).

[4] *E.g.*, SEC File No. 333-216969 (modified guaranteed annuity contract).

[5] *E.g.,* SEC File No. 333-216964 (market value adjusted investment options made available under certain variable annuity contracts and variable life insurance policies).

[6] Generally, the MVA formula approximates the relationship between interest rates prevailing at the time the owner makes the initial allocation to a specified period option, the interest rates prevailing at the time of the withdrawal or transfer, and the amount of time remaining in a specified period. If the prevailing interest rates are lower at the time of withdrawal or transfer than when the contract/policy was purchased, a positive MVA

An MVA will either increase or decrease the amount of money paid if a withdrawal or transfer occurs before the end of the specified period. MVAs are used to protect Nationwide Life from the risk that Contract reserves will have to be sold at a discount to satisfy Nationwide Life's obligations to pay the surrender or withdrawal; this is called the insurer's "disintermediation risk." The extent of an insurer's disintermediation risk depends upon the relationship between the contractually guaranteed interest rate and prevailing market interest rates in effect at the time of the transfer, surrender or withdrawal. When prevailing market interest rates rise, the disintermediation risk to the insurer increases; when prevailing market interest rates fall, the risk to the insurer decreases. To the extent an MVA protects Nationwide Life from disintermediation risks, it does so by shifting some or all of that risk to the Contract owner.

- *Contingent Deferred Annuity Contracts*[7]

  Under the contingent deferred annuity Contracts, Nationwide Life promises to pay the Contract owner or the Contract owner's spouse if a spousal continuation option has been elected (each a "Covered Person") lifetime income payments based on the Contract owner's direct investment in mutual funds and managed accounts available through an investment advisory program offered by the Contract owner's investment advisor ("Covered Assets"), regardless of how long the Covered Person lives or the actual performance or value of the Covered Assets in which the Contract owner invests, provided all conditions of the Contract are satisfied. A fee for this benefit is deducted periodically from the value of the Covered Assets held in the Contract owner's investment account ("Account") while the Contract is in force.

  These contingent deferred annuity Contracts provide longevity risk protection by promising annuity payments under the conditions set forth in the Contract—i.e.,

  (i) if, or when, the Contract owner is eligible to take withdrawals from his/her Account—within the permitted limits of the contract (referred to as the "Withdrawal Phase" of the Contract); and

  (ii) if, or when, the Contract owner's Account value falls below a certain amount (after the Withdrawal Phase has begun) or the Contract owner lives to a certain age, or upon election by the Contract owner after the Withdrawal Phase has begun, and lifetime income payments are made to the Covered Person (referred to as the "Income Phase" of the Contract). Once the contract enters the Income Phase, the Contract owner's Account is closed, and the Account value is transferred to Nationwide Life. At that point, Nationwide Life will begin to make fixed annuity payments to the Covered Person for the life of that person.

  In addition, Nationwide Life's obligation to make benefit payments under a Contract, if triggered, will produce a level of protection from the risk of downward fluctuations in a Covered Person's retirement income resulting from poor market performance.

  During the Withdrawal Phase, a contract owner begins to draw funds from his/her Account, thereby reducing his/her Account value. The Contract sets a maximum periodic withdrawal amount that a Contract owner may take during the Withdrawal Phase. Withdrawals in excess of that contractually permitted amount—and any withdrawals taken before the Contract owner (or the Contract owner's spouse if a spousal continuation option has been elected) elects to begin the Withdrawal Phase—reduce the

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will apply and contract/policy value is adjusted upward. Conversely, if prevailing interest rates are higher at the time of withdrawal or transfer than when the contract/policy was purchased, a negative MVA will apply and contract/policy value is adjusted downward and the owner may lose principal.

[7] SEC File No. 333-223955 ("Select Retirement Individual Supplemental Immediate Fixed Income Annuity Contract").

amount used to calculate lifetime income payments payable under the Contract and, therefore, also reduce (i) the maximum periodic withdrawal amount permitted during the Withdrawal Phase of the Contract, as well as (ii) any potential lifetime income payments Nationwide Life will make during the Income Phase of the Contract.

The Covered Assets are not held by Nationwide Life, but rather remain under the control of the contract owner in the contract owner's Account. The contract, which is registered on Form S-1, is a separate and distinct security from the Covered Assets.

- *Index-Linked Annuity Contracts*

  The index-linked annuity Contracts that Nationwide Life intends to issue can be either standalone index-linked annuity contracts[8], or contracts that offer variable investment options as well as registered index-linked investment options. Such Contracts will offer contract owners the potential for higher returns than traditional fixed index annuity contracts by assuming some market risk. Similar to variable annuities, the index-linked annuity Contracts provide returns associated with the performance of securities markets, but they also provide some protection against negative market performance.

  Owners of these index-linked annuity Contracts will be able to select among interest crediting options called "strategies." Each strategy is linked to the performance of a securities index and has a unique set of crediting factors, including protection features known as "floors" that establish the maximum negative market performance to which the Contract owner will be exposed in a specified period. A strategy's crediting factors and the performance of the index linked to the strategy are used to calculate any interest at the end of a strategy's term. The interest credited under a strategy may be positive or negative. In general, a "floor" that exposes the Contract owner to greater risk will have the potential for higher credited interest. Proceeds payable to a Contract owner who withdraws Contract value or surrenders the Contract before the end of a strategy's term end date will be adjusted according to a prescribed formula.

  On February 22, 2019, Nationwide Life filed an initial registration statement on Form S-1 for index-linked annuity contracts that it plans to launch later this year. In the future, Nationwide Life may offer different versions of the index-linked annuity Contract.

Efforts and Burdens Related to Preparing GAAP Financial Statements for Nationwide Life

Constructing GAAP compliant financial statements for Nationwide Life is time consuming and expensive.

- Nationwide Life's direct and indirect parents—NFS and the Mutual Companies—manage their respective business operations through operating segments; each segment represents the consolidation of the operations supporting multiple products offered through their respective subsidiaries. Neither NFS nor the Mutual Companies require their respective subsidiaries to provide GAAP financial statements, or to prepare a GAAP reporting package or partial GAAP financial statements in connection with the consolidated GAAP financial statements provided to noteholders (for NFS) or the combined GAAP financial statements provided to the shared board of directors (for the Mutual Companies). The process of deriving entity-level audited GAAP financial statements for any NFS or NMIC and NMFIC subsidiary from the information about the

[8] SEC File No. 333-229802 ("Single Purchase Payment Deferred Annuity Contract with Index-Linked Strategies").

subsidiary's operations developed in connection with the preparation of consolidated or combined GAAP financial statements is complicated and costly.

Furthermore, the time, effort and expenses involved to support the preparation of audited GAAP financial statements for Nationwide Life places significant strain on systems and personnel. Because Nationwide Life must prepare SAP financial statements for the states, production of entity-level GAAP financial statements results in duplicative reporting and auditing of financial statements. Moreover, the additional procedures that must be performed to carve out and produce audited entity-level GAAP financial statements for Nationwide Life result in higher costs and place additional demands on the systems and personnel involved in implementing those additional procedures.

Request for Permission to File SAP Financial Statements instead of GAAP Financial Statements

Rule 3-13 of Regulation S-X provides that the SEC "may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more financial statements required by Regulation S-X or the filing in substitution thereof of appropriate statements of a comparable character." Preparing and obtaining an independent audit of GAAP-compliant financial statements for Nationwide Life solely for inclusion in Form S-1 registration statements for the Contracts would involve substantial costs and administrative burdens, and would not provide investors in those insurance products with material information beyond that available in SAP financial statements. Moreover, for reasons stated more fully below, Nationwide Life believes that, for the Form S-1 registration statements for its Contracts, SAP financial statements that have been audited by an independent auditor[9] are appropriate financial statements of a comparable character to GAAP financial statements. Accordingly, Nationwide Life requests relief pursuant to Rule 3-13 of Regulation S-X to file SAP financial statements instead of GAAP financial statements in the Form S-1 registration statements for its Contracts.[10]

<u>SAP financial statements will provide investors in the Contracts with sufficient information to assess Nationwide Life's ability to meet its contractual obligations.</u>

In July 2017, Chairman Jay Clayton publicly acknowledged that the SEC's existing rules may require public companies to provide disclosure that is burdensome to produce, but is not material to the total mix of information available to investors. Chairman Clayton went on to note that such requirements may be appropriate for relief under Rule 3-13 of Regulation S-X.[11] Nationwide believes that requiring it to prepare GAAP financial statements for inclusion in registration statements for its Contracts—and for no other purpose—presents such a circumstance.

Forms N-3, N-4 and N-6 used to register variable insurance products under the 1933 Act already permit the use of SAP financial statements in place of GAAP financial statements if the insurance company issuing the variable insurance product would not have to prepare GAAP financial statements except for use in registration statements on such forms. This exception from the general requirement to file GAAP financial statements first appeared in Form N-4 for variable

[9] The auditor will satisfy the independence standards of Article 2 of Regulation S-X and be registered with and subject to inspection by the Public Company Accounting and Oversight Board.

[10] Because Nationwide Life relies on Rule 12h-7, it is not requesting relief pursuant to Rule 3-13 with respect to the 1934 Act.

[11] Remarks of SEC Chairman Jay Clayton at the Economic Club of New York (July 12, 2017) *available at* https://www.sec.gov/news/speech/remarks-economic-club-new-york.

annuities when the form was adopted in 1985[12], and later was incorporated into Form N-6 for variable life policies, which was adopted in 2002[13]. In proposing Forms N-3 and N-4 for variable annuity contracts with instructions permitting the use of SAP financial statements, the SEC recognized that: (a) guarantees associated with annuity payments and other benefits provided by the contracts—which are backed by the insurance company's general account—depend on the solvency of the insurance company; and (b) consequently, contract owners, participants, and annuitants may not want or need disclosure about the financial performance of the insurance company, but instead may be interested only in the insurer's solvency.[14]

Like investors in variable annuity contracts, the insurance benefits under which depend on the insurer's solvency, investors in Nationwide Life's Contracts are (or will be) most interested in information relevant to assessing Nationwide Life's ability to fulfill its contractual obligations. SAP financial statements are designed to provide precisely this type of information. They contain detailed information about an insurance company's balance sheet, including its regulatory capital and surplus that serve as financial cushions for paying contract owner claims. Furthermore, SAP financial statements enable state regulators to determine an insurance company's ability to meet its obligations to contract owners based on the availability of readily marketable assets when obligations are due.

Among other things, GAAP financial statements assist investors in understanding a company's "going concern value." Because there is no secondary market in the Contracts, this type of information is less valuable to potential or current Contract owners.

Consequently, SAP financial statements will provide owners of Nationwide Life's Contracts with sufficient information to assess Nationwide Life's solvency and its ability to fulfill its contractual obligations. GAAP financial statements, on the other hand, do not provide disclosure of additional value to contract owners sufficient to justify the significant costs and administrative burdens of preparing and auditing the additional set of financial statements.

<u>Nationwide Life is currently required to prepare GAAP financial statements only for the purpose of including them in registration statements for its Contracts</u>.

As noted above, Nationwide Life does not issue or have outstanding any publicly-traded equity or debt securities. In addition, the direct and indirect parents of Nationwide Life—NFS and the Mutual Companies—manage their respective business operations by operating segments that represent the combination of the operation of their respective subsidiaries. The GAAP-based information related to Nationwide Life's operations that would otherwise be prepared or provided for use by its direct and indirect parents in connection with their respective consolidated (for NFS) or combined (for the Mutual Companies) GAAP financial statements would not constitute GAAP financial statements, partial GAAP financial statements, or a GAAP reporting package. For these reasons, Nationwide Life (and its subsidiaries) are eligible to use SAP financial statements in the registration statements on Form N-4 and N-6 for its variable insurance products.

When the SEC provided relief from filing GAAP financial statements in Forms N-3, N-4 and N-6, it explicitly recognized alleviating disclosure burden as a legitimate reason to permit the use of SAP financial statements by insurance companies that would not have to prepare GAAP financial

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[12] Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Rel. Nos. 33-6588 and IC-14575 (June 14, 1985) ("Form N-4 Adopting Release").

[13] Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Rel. Nos. 33-8088 and IC-25522 (April 12, 2002) (Adopting Release).

[14] *See* Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Rel. Nos. 33-6502 and IC-13689 (December 23, 1983) (Proposing Release).

statements except for use in a registration statement for an insurance product.[15] Such relief is also appropriate for Nationwide Life with respect to the Form S-1 registration statements for its Contracts. As previously noted, Nationwide Life devotes (and for the Contracts it plans to issue, will devote) significant resources to preparing GAAP financial statements for inclusion in the Form S-1 registration statements for its Contracts.

Conclusion

Because the Contracts are insurance products subject to state regulation, and SAP financial statements provide existing and prospective owners of the Contracts with sufficient information to assess Nationwide Life's ability to meet its contractual obligations, Nationwide Life respectfully submits that filing SAP financial statements audited by an independent auditor in place of GAAP financial statements required by Regulation S-X would be consistent with investor protection. For the reasons stated above, we respectfully request, on behalf of Nationwide Life, that the Staff grant relief pursuant to Rule 3-13 of Regulation S-X to permit Nationwide Life to file SAP financial statements, audited by an independent auditor, in Form S-1 registration statements for its Contracts.

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Thank you for your attention to this matter. Please contact me at 202-383-0158 if you need additional information or have any questions concerning this request.

Sincerely,

Stephen E. Roth

Stephen E. Roth
Eversheds Sutherland (US) LLP

cc: Michael Stobart
Benjamin W. Mischnick

[15] In the adopting release for Forms N-3 and N-4, the SEC stated "the use of statutory financial statements is permitted solely to relieve the disclosure burden upon this group of registrants and their sponsoring insurance company." *See* Form N-4 Adopting Release, *supra* note 13, at n. 9.