# MEMORANDUM

May 28, 2024

**TO:** File Nos. S7-26-22, S7-12-23, and S7-16-23

**FROM:** Charles Lee
Office of Commissioner Mark T. Uyeda

**RE:** Meeting with Representatives of Nationwide Mutual Insurance Company

On April 26, 2024, Commissioner Mark T. Uyeda and his counsel, Charles Lee, had a meeting with Nationwide Mutual Insurance Company ("Nationwide") in Columbus, OH. Commissioner Uyeda and the attendees met in person. The Nationwide representatives in attendance consisted of:

- Mark Howard, EVP and Chief Legal Officer
- Bonnie Wolf, AVP and Chief of Staff to the Chief Legal Office
- John Boyer, SVP and Associate General Counsel – Nationwide Financial Legal
- Michael Stobart, VP and Associate General Counsel – Annuity & Life Legal
- Stephen Rimes, VP and Associate General Counsel – Mutual Funds Legal
- Holly Hunt, VP and Associate General Counsel – Nationwide Financial Sales & Distribution Legal
- Jim Rabenstine, VP and Nationwide Financial CCO

Among other matters, the participants discussed (i) Nationwide's comment letter filed in connection with the proposed rule Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, (ii) the Committee of Annuity Insurers' ("CAI") and the American Council of Life Insurers' ("ACLI") comment letters filed in connection with the proposed rule Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, and (iii) CAI's and ACLI's comment letters filed in connection with the proposed rule Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities.

Nationwide submitted a summary of the meeting, which is attached as Annex A to this memorandum.

Annex A

(see attached)

**John Boyer**
Senior Vice President
Associate General Counsel
Nationwide Financial

May 7, 2024

Mr. Charles Lee
Counsel to Commissioner Mark Uyeda
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Dear Charles,

Thank you for taking the time on April 26 to discuss the important issues facing consumers and the financial services industry with us. As a follow-up, I wanted to provide some additional information regarding a few of the items we discussed.

As a member of the Committee of Annuity Insurers ("CAI") and the American Council of Life Insurers ("ACLI"), we fully support CAI and ACLI's comment letters on SEC rulemaking efforts submitted to the SEC on November 28, 2023, and June 17, 2022, respectively.

Both comment letters highlight the unique impact of SEC Rules on non-public insurance companies, like Nationwide, that issue investment securities that are currently required to be registered on SEC Form S-1. Form S-1 requires company-related disclosure and financial statement information that differs by product type. As noted by CAI "[r]egardless of the type of annuity or life insurance product, an investor's contractual relationship with the insurance company is inherently limited to the company's ability to honor its contractual guarantees." Nationwide fully supports any efforts to align SEC disclosure requirements for all annuity and life insurance product types regardless of SEC registration form.

For example, we support the proposition of including Market Value Adjustment annuities ("MVAs") on Form N-4 as detailed in CAI's comment letter regarding the proposed rule "Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked Annuities (File No. S7-16-23)." Further, for those products that are unlikely to be included in current efforts to expand the use of Form N-4, we support CAI's position that the SEC should take future actions in relation to insurance investment products issued on Form S-1 including:

(1) With respect to non-variable annuity and life insurance product offerings registered on Form S-1, the SEC should announce a non-enforcement policy that would permit the registrant to (i) omit from the Form S-1 prospectus company-related disclosures that are not required by Form N-4; (ii) use SAP financial statements in the Form S-1 prospectus if consistent with the limitations of Form N-4; and (iii) include interim financial statements in the Form S-1 prospectus only in the limited circumstances required by Form N-4.

(2) With respect to reports filed under the 1934 Act, as part of any other ongoing or future rulemaking that would impose new company-related disclosure or financial statement requirements, the SEC should give close consideration to whether those requirements should apply to insurance company

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issuers whose reporting obligations arise solely from the registration of non-variable annuity or life insurance product offerings under the 1933 Act, and do so in a manner consistent with the fundamental principles underlying the RILA registration form.

These actions would further mitigate the impacts of the final rule "The Enhancement and Standardization of Climate Related Disclosures for Investors" (Proposed Rule: Release Nos. 33-11042; 34-94478; Final Rule: Release Nos. 33-11275; 34-99678: File No. S7-10-22) on non-public insurance companies since company-related disclosure and financial statement requirements are required to differ by product type, even though there is no logical basis for those requirements to differ.

We also briefly discussed the SEC's proposals regarding hard close and swing pricing (amendments to Rule 22c-1 of the Investment Company Act of 1940), which were intended to address potential dilution concerns for existing shareholders of mutual funds. Nationwide recalled Commissioner Uyeda's comments from the ICI's Investment Management Conference in March of 2023, noting his concerns with the rules. Nationwide shared those concerns, as did many in the industry. We also briefly mentioned how these proposals, should they become effective, may be impacted by the upcoming election cycle, particularly in light of the Congressional Review Act and the ability to have such amendments overturned in certain circumstances. We discussed the requirements of the Congressional Review Act, including its deadlines, the timely joint resolution required from Congress and the political appetite of the President to invoke this action. Nationwide noted that the anticipated deadline for the amendments to go effective without being subject to the Congressional Review Act would be May 22, 2024, and expressed the industry's need for clarity from the SEC regarding the future of these amendments; specifically, whether they would go effective, would be formally withdrawn or would be reproposed in a different iteration after the election. We also acknowledged the consensus regarding the shortcomings of the proposals and the need to obtain industry and political support for them, particularly since many considered the amendments as a solution in search of a problem. Finally, Nationwide opined that any regulatory attempt to reduce potential dilution of shareholders' interests using the proposed changes to the rules will create more significant problems than they solve.

Many thanks to the commissioner for sharing his insights into the proposed rule regarding Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers. We appreciate the backdrop provided about how the proposed rule came to fruition. We agree with several of the trade groups, like CAI and ACLI, who submitted comment letters asserting, among many arguments, that the proposed rule is overly broad and challenging to implement and suggesting that conflicts of interest are already successfully managed by the SEC's Regulation Best Interest Rule.

Again, thank you so much for spending part of your Friday morning with us. We greatly appreciate your and Commissioner Uyeda's willingness to discuss these important issues.

Sincerely,

John Boyer

CC: Mark Howard, Michael Stobart, Holly Hunt, Stephen Rimes, and Jim Rabenstine

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