



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 15, 2017

Victoria R. Westerhaus
Partner
Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106

Re: N.I.S. Financial Services, Inc. – Reliance on Exemption in Paragraph (k)(1) of Rule 15c3-3

Dear Ms. Westerhaus:

This responds to your July 7, 2017 letter (“Letter”) on behalf of N.I.S. Financial Services, Inc. (“NIS”), in which you request written assurance that the staff of the Division of Trading and Markets (the “Division”) of the U.S. Securities and Exchange Commission (“Commission”) will not recommend enforcement action to the Commission under section 15(c) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 15c3-3 thereunder (“Rule 15c3-3”) if NIS relies on the exemption in paragraph (k)(1) of Rule 15c3-3 to conduct its business.

You have made the following representations with respect to your request. NIS is a broker-dealer and a member of the Financial Industry Regulatory Authority (“FINRA”). NIS has an affiliate called Ozark National Life Insurance Company (“Ozark National Life”) and both entities are wholly owned subsidiaries of CNS Corporation. Ozark National Life is a life insurance company incorporated under the insurance laws of Missouri on April 22, 1964. CNS Corporation formed NIS for the purpose of processing mutual fund investments, which are ancillary to Ozark National Life’s life insurance product offerings. Since 1969, Ozark National Life and NIS have sold products called “Balanced Programs,” which are the coordinated sale of whole life insurance policies and mutual funds. Ozark National Life underwrites the life insurance policies while NIS sells the mutual fund investments of an unaffiliated mutual fund company (the “Mutual Fund”). The life insurance agents of Ozark National Life who sell the Balanced Programs are also Series 6 registered representatives of NIS. Clients who purchase the Balanced Programs are advised that they are buying a modified whole life insurance policy and, after the first policy year, making periodic investments in the Mutual Fund. Ozark National Life

and NIS have offered 25 different Balanced Programs at various times between 1969 and the present.

You represent that since the inception of the Balanced Programs, NIS has never been the direct recipient of customer funds.¹ Instead, clients make two separate payments when establishing a Balanced Program: one payment to Ozark National Life for the life insurance and another payment to the Mutual Fund to establish the mutual fund account. Unless the client makes special arrangements, this is the only amount that will be invested in the first year. In subsequent years, clients make single payments to Ozark National Life, and Ozark National Life remits the mutual fund portion of the payment to the Mutual Fund. Payments occur either by check or Automated Clearing House (“ACH”) fund transfer with Ozark National Life listed as the designated payee.

Rule 15c3-3 requires broker-dealers that carry customer accounts to maintain physical possession or control over customers’ fully paid and excess margin securities, and to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. Pursuant to paragraph (k)(1) of Rule 15c3-3, a broker-dealer registered with the Commission is exempted from the requirements of that rule provided that the broker-dealer, among other things, limits its activities to certain mutual fund or life insurance products, promptly transmits all customer funds and securities, and doesn’t otherwise hold funds or securities owed to customers. The Commission has interpreted the term “promptly transmits” to require that “transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities” and has interpreted the term “receipt” to mean the time at which a check or other negotiable instrument is first received by a registered representative of a broker-dealer.² Consequently, in order to rely on an exemption from Rule 15c3-3 pursuant to paragraph (k) of the rule, a broker-dealer must forward checks by noon of the next business day following a registered representative’s receipt of such payment, unless the purpose for holding such payment is to complete the broker-dealer’s account opening process in compliance with applicable regulatory requirements, such as FINRA’s “Know Your Customer” and “Suitability” rules.³

¹ You represent that NIS cannot directly accept funds from Balanced Program customers because insurance regulations require that payments for whole life insurance be made directly to Ozark National Life. Furthermore, Ozark National Life and NIS have considered the possibility of requiring customers to make separate payments for the mutual fund investments and for the whole life insurance, but have decided that it would be very costly, burdensome, and time-consuming for the large number of customers who pay small monthly premiums. Moreover, such a change in procedure would be disruptive to NIS’s business and would create an excessive administrative burden for the broker-dealer.

² See 17 CFR 240.15c3-1(c)(9) and FINRA, Interpretations of Financial and Operational Rules. Rule 15c3-3(k)(2)(ii)/015, available at <http://www.finra.org/sites/default/files/sea-rule-15c3-3-interpretations.pdf> (definition of “promptly transmit”).

³ See Order Granting a Conditional Exemption to Broker-Dealers From Requirements in Rules 15c3-1 and 15c3-3 Under The Securities Exchange Act of 1934 To Promptly Transmit Customer Checks For The Purchase of Deferred Variable Annuity Contracts, Exchange Act Release No. 56376 (Sept. 7, 2007); letter issued to NYLIFE Securities LLC, by Mark M. Attar, Senior Special Counsel, Division of Trading and Markets, Commission, dated March 12, 2015; letter issued to MML Investors Services, LLC, MetLife

You represent that Ozark National Life, acting as processing agent of customer funds on behalf of NIS, historically has not promptly transmitted customer funds to the Mutual Fund in three distinct scenarios:

1. If required by the Mutual Fund, until such time as the customer's funds reached the minimum investment balance, which is currently \$100;
2. Because of the large volume of returned checks and ACH payments, until such time as a customer's check or ACH payment had been cleared through normal banking cycles by the appropriate financial institution; and
3. Instances in which mutual fund transactions could not be processed due to the removal of NIS as the broker-dealer on the given customer's mutual fund account.

Ozark National Life records customer funds not promptly transmitted as funds held in suspense on its books.⁴ If a mutual fund transaction cannot be processed due to the removal of NIS as the broker-dealer on the mutual fund account, Ozark National Life refunds the money to the customer with an explanation of such refund.

In addition, NIS maintains a "Special Account for the Exclusive Benefit of Customers of N.I.S. Financial Services, Inc." (a "special reserve account") with a balance of at least \$700,000 (an amount that historically has been approximately \$200,000 in excess of any balance held in suspense by Ozark National Life) for the protection of customer funds that are not promptly transmitted. Moreover, NIS intends to continually monitor its special reserve account balance to ensure it maintains in the account an amount of funds equal to the amount of funds held in suspense by Ozark National Life at any given time, together with an additional safety margin of approximately \$200,000 in excess of such funds held in suspense.

Based on your representations, the Division will not recommend enforcement action to the Commission if NIS relies on the exemption in paragraph (k)(1) of Rule 15c3-3 while Ozark National Life, acting as processing agent of customer funds on behalf of NIS, does not promptly transmit customer funds in the three instances set forth in the Letter. This position is conditioned on the following. First, NIS must disclose to its Balanced Program customers that their funds may be held by Ozark National Life until such time as the customer has accumulated the minimum investment balance, if any, required by the Mutual Fund and until such time as the customer's check or ACH payment has been cleared through normal banking cycles by the

Securities, Inc., and Thrivent Investment Management, Inc., by Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Commission, dated July 19, 2016.

⁴ You represent that the Mutual Fund has temporarily waived the minimum contribution requirement and, as an interim solution, Ozark National Life no longer waits for customer checks and ACH payments to clear before it transmits funds. Consequently, Ozark National Life transmits customer funds to the Mutual Fund on a daily basis and does not currently hold any funds in suspense.

Ms. Victoria Westerhaus

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appropriate financial institution. Second, upon notification from the Mutual Fund that customer funds cannot be processed because a customer has removed NIS as the broker-dealer on the mutual fund account, Ozark National Life must return the funds to the customer no later than noon of the following business day with an explanation of such refund. Third, the special reserve account that NIS maintains for the protection of customers who purchase Balanced Programs must only contain cash and must hold an amount of funds equal to the funds held in suspense at Ozark National Life plus a safety margin of approximately \$200,000 in excess of such funds held in suspense.

You should understand that this is a staff position with respect to enforcement only, and does not purport to state any legal conclusions on this matter. The Division's position is confined to the facts and representations as stated herein. Any material change in circumstances may warrant a different conclusion and should be brought immediately to the Division's attention. This position may be withdrawn or modified if the Division determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the securities laws.

Sincerely,



Michael A. Macchiaroli
Associate Director
Division of Trading and Markets



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July 7, 2017

1934 Act, Rule 15c3-3
Via Electronic Mail

Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Attention: Mr. Michael A. Macchiaroli

Re: N.I.S. Financial Services, Inc.

Ladies and Gentlemen:

On behalf of our client, N.I.S. Financial Services, Inc. ("NIS"), we hereby request a determination by the Staff of the Division of Trading and Markets ("TM Staff") that it will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if NIS conducts its broker-dealer business in the manner described below in reliance upon subparagraph (k)(1) of Rule 15c3-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for broker-dealers. NIS requests this interpretation of Rule 15c3-3 and the exemption thereto under the Exchange Act from the Commission in order to allow NIS to continue, with minimal disruption, its current mode of business operations.

I. Statement of Facts

Ozark National Life Insurance Company ("Ozark National Life") was incorporated on April 22, 1964, and received a Certificate of Authority on June 24, 1964, as a life insurance company under the insurance laws of Missouri. Ozark National Life is a wholly owned subsidiary of CNS Corporation. Ozark National Life sells life insurance products in 29 states. It currently has approximately 191,000 insurance policies in force. The types of policies include, among others, term life, whole life and cancer. NIS is a member of FINRA and is a wholly owned subsidiary of CNS Corporation and a sister company of Ozark National Life. CNS Corporation formed NIS for the purpose of processing mutual fund investments, which are ancillary to Ozark National Life's life insurance product offerings.

Since 1969, Ozark National Life and NIS have sold products called "Balanced Programs." Balanced Programs are the coordinated sale of whole life insurance and mutual funds (Ozark National Life underwrites the life insurance policies, while NIS sells the mutual fund investments). The life insurance agents of Ozark National Life who sell the Balanced Programs are also Series 6 registered representatives of NIS. Ozark National Life and NIS have offered 25 different Balanced Programs at various times between 1969 and the present. Currently, Ozark National Life and NIS offer two Balanced Programs: Plan 287 (offered since 2016) and Plan 297 (offered since 2016).

Clients who purchase the Balanced Programs are advised that they are buying a modified whole life insurance policy and, after the first policy year, making periodic investments in a mutual fund. During the first year, all of the payments are applied as life insurance premiums. After the first year, Ozark National Life forwards an amount equal to approximately one-half of the basic premium to an unaffiliated mutual fund company for investment in the client's mutual fund account as the client pays premiums on the policy. The average Balanced Program payment on policies currently sold is \$1,033.62 annually. As such, the average monthly mutual fund investment is approximately \$43.03.

Since 1969, NIS has operated under an established business model in which NIS was never the direct recipient of client funds. Instead, all payments were made either to Ozark National Life or directly to an unaffiliated mutual fund company (the "Mutual Fund").

When establishing a "Balanced Program," clients write two checks: one to Ozark National Life for the life insurance and a separate check to the Mutual Fund to establish their mutual fund account. Unless the client makes special arrangements, this is the only amount that will be invested the first year. In subsequent years, clients make single payments to Ozark National Life, and Ozark National Life remits the mutual fund portion of the payment to the Mutual Fund. The Mutual Fund, in turn, directly provides the client with confirmation of each mutual fund purchase. Besides "Balanced Programs," clients may also add "extra fund billing" to their life insurance policies, and the payments are handled in the same manner. Ozark National Life currently has approximately 135,000 Balanced Program life insurance policies in force. Each month there are between 100,000 and 120,000 transactions which occur either by check or Automated Clearing House ("ACH") funds transfer with Ozark National Life as the designated payee. The number of transactions varies considerably depending upon which "mode" of payment the client selected (annual, semi-annual, quarterly or monthly). Of these monthly payments, 11,000 to 13,000 are made by check and 85,000 to 108,000 are made by ACH funds transfer. However, if a client wishes to perform a retirement account roll-over or any other type of mutual fund investment, such customer writes a check or sends an ACH payment directly to the Mutual Fund.

To facilitate this arrangement, customers sign a Balanced Program Proposal form which states, in relevant part:

I hereby authorize and instruct Ozark National Life Insurance, until further written notice to the contrary, to act as my agent and to remit to [name of Mutual Fund custodian and agent], custodian and transfer agent for [name of Mutual Fund], any monies in excess of any insurance premiums due. These excess funds are to be remitted for the purchase of mutual fund shares for my account at the market price at the time of receipt by [name of Mutual Fund custodian and agent].

The same authorization was formerly memorialized on a form titled Authorization Form until December of 2011. The former Authorization Form also included the following disclosure:

I understand that [name of Mutual Fund custodian and agent] will not accept monies for my mutual fund account in amounts less than \$50.00.¹

¹ The Mutual fund's current minimum amount is now \$100.

authorize Ozark National Life Insurance to hold in suspense any monies to be remitted to [name of Mutual Fund custodian and agent] until such time as these monies amount to at least \$50.00.

Additionally, because of the large volume of returned checks and ACH payments (approximately 400 to 500 per month), Ozark National Life began the practice of not remitting funds to the Mutual Fund until actual receipt of those funds (i.e., checks and ACH payments clearing at the bank). Lastly, instances occurred where mutual fund transactions could not be processed due to the removal of NIS as the broker/dealer on the given customer's mutual fund account and therefore the trade could not be completed. In each of these three situations, no immediate mutual fund purchase could occur, and the transaction was recorded as customer funds being held in suspense on the books of Ozark National Life.

During the course of a 2006 examination by the NASD, the NASD examiner noted this suspense account balance as a failure by NIS to record a \$1,243,416 liability related to the customer funds being held in the suspense account, thus resulting in an overstatement of the firm's net worth.

As noted above, Ozark National Life has operated in the manner described above since the inception of the Balanced Program in 1969. Our client has attempted to determine whether NIS or Ozark National Life had ever sought any exemption or authorization from the Commission for the arrangement embodied in the Authorization. Former NIS and Ozark officers and employees have stated that they believed the Balanced Program was operating under an interpretation given to NIS verbally by a Commission reviewer more than 48 years ago. Unfortunately, our client has been unable to locate the name of the Commission reviewer or any other documentary evidence of the interpretation, possibly because not all records for Ozark National Life were retained through the various changes in ownership during the last 48 years.

The reasons NIS cannot directly accept Balanced Program customer checks include:

- Balanced Programs are the coordinated sale of whole life insurance and mutual funds (Ozark National Life underwrites the life insurance policies, while NIS sells the mutual fund investments). Clients who purchase the Balanced Programs are advised that they are buying a modified whole life insurance policy and, after the first policy year, making periodic investments in a mutual fund. During the first year, all of the payments are applied as life insurance premiums. After the first year, Ozark National Life forwards any monies in excess of the insurance premiums (designed to be an amount equal to approximately one-half of the basic premium to an unaffiliated mutual fund company) for investment in the client's mutual fund account as the client pays premiums on the policy. Insurance regulations require that the payments be made to Ozark National Life, rather than to NIS.
- Ozark National Life and NIS have considered the possibility of separate payments to NIS and to Ozark National Life but don't believe that is feasible because Ozark National Life and NIS have a very large number of customers who pay very small monthly premiums. It would be very costly, burdensome and time-consuming for

customers buying the Balanced Program to require separate checks or ACH payments to each of Ozark National Life and NIS. Such a procedure would be disruptive to the business and would create a tremendous administrative burden. From a business efficiency standpoint, it is not feasible to require separate checks or ACH payments to each of Ozark National Life and NIS. It would create an excessive burden on NIS' business and, more importantly, on its numerous clients if it now had to ask clients to send a separate check or ACH payment each month to each of Ozark National Life and NIS.

Interim Steps Taken

In 2006, in order to diminish concerns regarding monies being held in suspense by Ozark National Life, based on advice from NASD (now FINRA) representatives, our client made the following interim changes to address this issue while it seeks clarification from the Commission regarding Rule 15c3-3 and the exemption thereto:

- 1. Mutual Fund's \$50 Minimum Contribution Requirement.** Regarding those monies held by Ozark National Life because of the Mutual Fund's minimum \$50 contribution requirement, the Mutual Fund has granted our client's request to temporarily waive the \$50 minimum contribution requirement. As an interim solution, Ozark is sweeping all mutual fund suspense accounts and sending the money on a daily basis to each Mutual Fund. The Mutual Fund, however, does not want to continue to waive the minimum contribution requirement because of the administrative costs and burden of sending transaction confirmations for very small mutual fund purchases.
- 2. Suspense for Returned Checks and ACH Payments.** Ozark National Life is no longer waiting for checks or ACH payments to clear before transmitting funds to the Mutual Fund. NIS has made arrangements whereby the Mutual Fund will not permit immediate redemptions so that NIS will have an opportunity to verify that a check or ACH payment has cleared before a customer can redeem his or her shares. Again, this is an interim arrangement. The suspense account consistently reflects a negative balance due to the approximately 400 to 500 returned items per month (or \$1,000 to \$4,000 per day in returned items). Additionally, while NIS has the ability to reverse these returned item transactions with the Mutual Fund, NIS bears the market risk during the time period from when the funds are invested until the transaction is reversed.
- 3. Suspense for Non-NIS Accounts.** Ozark National Life is, and plans to continue, promptly refunding, directly to the customer, all funds which are designated for accounts which are not in good order (i.e., where no mutual fund account yet exists or where a competing broker/dealer has taken over the account). Because NIS loses all ability to monitor activity when another broker/dealer has taken over the account, it is not appropriate to contribute to the fund account. Accordingly, because NIS is obligated to refuse the trade, the money is promptly refunded to the customer with an explanation of such refund.

4. Formation of (k)(2)(i) Account. In addition to the above actions, NIS currently maintains a "Special Account for the Exclusive Benefit of Customers of N.I.S. Financial Services, Inc." (a "(k)(2)(i) account") in accordance with Rule 15c3-3 of the Exchange Act. NIS placed \$700,000 in the (k)(2)(i) account for the protection of customers who purchase Balanced Programs, which NIS deemed in good faith to be more than adequate to cover any "intra-day" accumulation which might occur between the daily sweeps of Ozark National Life's accounts to the Mutual Fund. Ozark National Life does not transfer customer funds into the (k)(2)(i) account and instead promptly wires such funds directly to the Mutual Fund.

II. Discussion and Analysis

Based upon the facts set forth above and on various interpretive letters with respect to the term "promptly transmit" as defined in Rule 15c3-3, it is our opinion that NIS should be able to operate pursuant to subparagraph (k)(1) of Rule 15c3-3 if NIS conducts its business subject to the following conditions: (1) Ozark National Life, acting as a processing agent for NIS, would collect and promptly transmit customer funds to the Mutual Fund (with the exception of three distinct scenarios, as discussed below); (2) NIS would maintain its (k)(2)(i) account and continually monitor its (k)(2)(i) account balance to ensure it maintains the amount of funds held in suspense by Ozark National Life at any given time, together with an additional safety margin of approximately \$200,000 in excess of such funds held in suspense; and (3) NIS would be responsible for the following securities-related activities: opening accounts, imaging and processing orders and setting up and maintaining customer files.

Discussion of "Promptly Transmit"

In general, the term "promptly transmit" as used in paragraph (k) of Rule 15c3-3 has been interpreted to require a broker-dealer to transmit customers' property by noon of the next business day after receipt or by noon of the next business day after settlement day, whichever is later. See Midwest Stock Exchange no-action letter dated July 14, 1975. However, NIS desires to permit Ozark to temporarily hold money in suspense for three purposes: (1) until clearance of a customer's check or ACH payment; (2) if required by the Mutual Funds, until the customer accumulates the current \$100 minimum investment balance; or (3) instances in which mutual fund transactions cannot be processed due to the removal of NIS as the broker/dealer on the given customer's mutual fund account, at which time the money would be promptly refunded to the customer with an explanation of such refund.

The Commission has recognized the validity of holding a customer's property until such time as the customer's check has cleared through normal banking cycles. See National Bank of North America no-action letter dated June 1, 1977 (the Commission agreed that it would raise no question if a broker-dealer operating pursuant to subparagraph (k)(2)(i) of Rule 15c3-3 held, or had its agent hold, customer's fully-paid negotiable securities until such time as the customer's check received in payment for such security has cleared, provided that the customer is notified that such securities will be delivered upon the clearance of the check received in payment). NIS would like Ozark National Life to continue to hold customer

funds until the customer's check or ACH payment has cleared. In accordance with the National Bank of North America no-action letter, we believe NIS and Ozark National Life can hold a customer's check until it has cleared, so long as the customer is notified that his or her check or ACH payment will be held until it has cleared through normal banking cycles. With respect to future clients buying the Balanced Program, NIS would expand the Authorization described above to state that the customer's check or ACH payment will be held until such funds have cleared through normal banking cycles and then will be transferred to the Mutual Funds to purchase the mutual fund portion of the customer's Balanced Program, subject to the minimum investment requirement discussed below.

Second, Ozark National Life would hold customer funds until a customer accumulates the current \$100 minimum investment amount. We believe this is a novel issue which, to our knowledge, has not been addressed by the SEC. However, because any minimum investment amount would be outside the control of NIS and because the money would be held in Ozark National Life's account (which will be protected by a balance of at least \$700,000 in the NIS (k)(2)(i) account, an amount that historically has been approximately \$200,000 in excess of any balance held by Ozark National Life), we believe that the benefits to investors outweigh the potential risks if Ozark National Life is allowed to hold customer funds for the purpose of accumulating the \$100 minimum investment contribution, so long as customers are notified that such funds will be held until the minimum contribution requirement is accumulated, as reflected in a form of Authorization substantially similar to the one set forth above. NIS will continually monitor its (k)(2)(i) account balance and will ensure that it always has sufficient funds to cover the amount being held by Ozark National Life, and will also include in the (k)(2)(i) account a balance of approximately \$200,000 in addition to the amount being held in suspense by Ozark National Life at any given time.

Responsibilities of NIS

As a registered broker-dealer, NIS is responsible for the following securities-related activities: opening accounts, recording and processing customer orders and setting up and maintaining customer files. Customer funds that are sent to Ozark National Life, as processing agent for NIS, simultaneously are entered on the blotters of NIS. As a result, as soon as money is received by Ozark National Life, it can be traced to the appropriate client through the NIS system.

Because NIS is a subscription firm, however, it does not enter customer orders, clear transactions, carry customer accounts, distribute order confirmations after each payment is posted or distribute quarterly statements to customers. Instead, the Mutual Fund handles all such functions, including distributing order confirmations after it posts each customer payment and distributing quarterly statements to customers. NIS has an immediate record of such confirmations and statements through the Mutual Fund's Vision system, and every broker dealer and registered representative receive electronic copies on an annual basis.

NIS currently discloses and will continue to disclose to its customers that NIS, and not Ozark National Life, is offering the Mutual Funds, and that the customer's intended investment amount is not covered by the Securities Investor Protection Corporation while it is in the possession of Ozark National Life.

III. Request for No-Action Relief

We believe the interests of the approximately 135,000 Balanced Program customers of Ozark National Life and NIS would be best served by a favorable consideration of the requests contained in this letter. Based upon the foregoing facts and analysis, we respectfully request that the TM Staff advise us that it will not recommend to the Commission that any enforcement action be taken if NIS conducts its broker-dealer business in the manner described above in reliance upon the exemption under subparagraph (k)(1) of Rule 15c3-3 of the Exchange Act for broker-dealers.

Please do not hesitate to contact me at 816-691-2427 or vicki.westerhaus@stinson.com with any comments, questions or requests for additional information regarding the foregoing. In addition, if the TM Staff believes it may not agree with the conclusions expressed in this letter, we request the opportunity to confer with them prior to a written response to this letter. Please acknowledge receipt of this letter on the enclosed copy hereof and return the same to the undersigned in the enclosed self-addressed, stamped envelope.

Best regards,

STINSON LEONARD STREET LLP



Victoria R. Westerhaus

VRW/pm

cc: N.I.S. Financial Services, Inc.