UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31601 / May 14, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16537

In the Matter of

NATIONWIDE LIFE INSURANCE COMPANY

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Nationwide Life Insurance Company ("Nationwide" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter involves Nationwide's processing of purchase and redemption orders for variable insurance contracts and underlying mutual funds (collectively "orders") in violation of Rule 22c-1 under the Investment Company Act.[1] Rule 22c-1 governs the pricing of orders and requires Nationwide to price orders received before 4:00 p.m. at the current day's price and orders received after 4:00 p.m. at the next day's price.

2. From October 1995 through September 2011, Nationwide processed hundreds of thousands of orders sent via U.S. First Class mail by owners of Nationwide's variable annuity and variable life insurance contracts. Nationwide received orders and other mail through various Post Office ("PO") Boxes located at a U.S. Post Office in Columbus, Ohio ("Post Office"). Most Nationwide First Class PO Box mail ("PO Box Mail") became available for retrieval by Nationwide in the early morning. However, during multiple morning trips to the Post Office, Nationwide only picked up the First Class PO Box mail that did not contain orders. Nationwide intentionally delayed retrieving the First Class PO Box mail containing orders until late in the afternoon and waited until after 4:00 p.m. to deliver this mail to Nationwide's home office.

3. Nationwide violated Rule 22c-1 by treating orders contained in this mail as being received after 4:00 p.m. and then processed these orders using the next day's price as opposed to the current day's price. By contrast, Nationwide complied with Rule 22c-1 in processing orders sent via U.S. Postal Service Priority Mail or Priority Express Mail ("Priority Mail"), both of which enabled contract owners to track an order's time of delivery.

Respondent

4. Nationwide Life Insurance Company is a stock life insurance company organized under Ohio law in 1929 and headquartered in Columbus, Ohio. Nationwide is owned by Nationwide Financial Services, Inc. ("Nationwide Financial"), which, in turn, is an indirect subsidiary of Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company.

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[1] The findings in this Order relate only to Nationwide's processing of subsequent purchase payments and not initial purchase payments, which are separately governed by Rule 22c-1(c) under the Investment Company Act.

<u>Background</u>

A. Variable Insurance Products

5. Variable annuity and variable life insurance contracts (collectively "variable contracts") are two different types of contracts between a purchaser and an insurance company. A variable annuity provides for a cash value that can be paid to the contract owner and lifetime income payments to the annuitant or contract owner that typically begin at retirement. A variable life insurance contract provides for payment equal to the cash value of the policy and a death benefit that is a multiple of the cash value.

6. Variable contracts are redeemable securities issued by insurance company sponsored segregated asset accounts ("separate accounts"), which are registered investment companies. Investors typically purchase variable contracts from an insurance company through an initial purchase payment. If permitted under the variable contract, the contract owner may submit subsequent purchase payments.

7. The separate account uses the purchase payments to acquire shares of underlying mutual funds that are registered investment companies that have contracted with the insurance company to serve as investment options for the variable contract. The value received by the owner of the variable contract at the end of the contract typically depends on the performance of the underlying mutual funds designated by the contract owner. Mutual funds underlying the variable contracts are not sold to the general public, but instead are offered only to insurance company separate accounts. In some cases, the funds are patterned on and managed similarly to corresponding retail funds offered by the mutual fund complex. The underlying mutual fund(s) to which a variable contract's assets are allocated is determined by the contract owner.

B. Rule 22c-1 Under the Investment Company Act

8. Rule 22c-1 promulgated under the Investment Company Act governs the pricing of orders to purchase and redeem shares of redeemable securities issued by registered investment companies, including unit investment trusts (such as variable annuity and variable life separate accounts) ("UITs") and mutual funds.

9. Rule 22c-1(a) requires, among other things, a registered investment company issuing any redeemable security, persons designated in such issuer's prospectus as authorized to consummate transactions in any such security, and principal underwriters of, or dealers in any such security to sell, redeem, or repurchase any such security based on the net asset value ("NAV") of the security next computed after receipt of the order.

10. Rule 22c-1(b) requires that the current NAV be computed at least once daily, Monday through Friday, at a specific time or times as set by the investment company's board of directors. In practice, the NAV of virtually all such registered investment companies is computed once a day as of 4:00 p.m. ET. Thus, orders received prior to 4:00 p.m. ET must be priced at that day's price, *i.e.*, the price computed as of 4:00 p.m., while orders received after 4:00 p.m. ET must be priced at the next day's price, *i.e.*, the price computed as of 4:00 p.m. on the next business day.

C. Nationwide is Subject to the Pricing Requirements of Rule 22c-1

11. During the relevant time period, Nationwide was subject to the pricing requirements of Rule 22c-1 at two levels: 1) it was designated in the Nationwide variable contract prospectuses as authorized to consummate transactions in the variable contracts; and 2) it was designated in the prospectuses of the underlying mutual funds as authorized to consummate transactions in underlying mutual fund shares.

1. The Separate Account Level

12. Nationwide issued and/or serviced variable contracts through 35 separate accounts that were registered with the Commission as UITs under the Investment Company Act. Nationwide offered and its affiliates distributed its variable contracts to investors in the United States through prospectuses filed with the Commission.

13. The prospectuses of the variable contracts identified Nationwide as the depositor and sponsoring insurance company responsible for establishing and maintaining the separate accounts. In this capacity, Nationwide had continuing functions and responsibilities with respect to the administration of the affairs of the separate accounts. These disclosed responsibilities included, among other things, accepting redemption orders and purchase payments and investing the payments in variable contracts as directed by the contract owner.

2. The Mutual Fund Level

14. In addition, Nationwide entered into participation agreements with various mutual funds which agreed to serve as investment options for Nationwide’s variable contracts. The participation agreements, among other things, designated Nationwide as a limited agent to act on behalf of the mutual funds to receive orders to purchase and redeem fund shares on behalf of Nationwide’s separate accounts.

15. Consistent with Nationwide’s agency role, the participation agreements further provided that Nationwide’s receipt of any purchase or redemption order on any business day constituted receipt of that order by the underlying mutual fund itself.

16. The underlying mutual funds available as investment options within Nationwide’s variable contracts disclosed in their prospectuses that the underlying mutual funds were only available through the variable contracts and these prospectuses directed investors to consult the insurance company’s own variable contract prospectuses for information about the purchase and redemption of underlying mutual fund shares. In turn, Nationwide’s variable contract prospectuses disclosed that Nationwide acted as a limited agent for the underlying mutual funds for purposes of accepting orders.

D. The Prospectus Disclosures

17. Nationwide variable contract prospectuses generally stated that orders received at Nationwide’s Columbus, Ohio home office (“Home Office”) before 4:00 p.m. would receive the

current day's accumulation unit value ("AUV"). The AUV is the measure of the contract owner's investment in a contract and is based on the NAVs of the underlying mutual funds, adjusted for contract charges. Nationwide's prospectuses further disclosed that orders received after 4:00 p.m. would receive the next day's AUV.

18. The prospectuses of the underlying mutual funds also disclosed the same 4:00 p.m. cut-off for determining whether an order was assigned the current day's NAV or the next day's NAV.

<u>Nationwide Failed to Price Orders on a Timely Basis</u>

19. As described below, despite having access to orders contained in the PO Box mail early each morning, Nationwide delayed the retrieval of the orders from the Post Office and waited until after 4:00 p.m. to deliver them to the Home Office. Nationwide then processed these orders using the next day's AUV and transmitted the orders to the mutual funds for processing using the next day's NAV.

20. Throughout the relevant period, Nationwide received orders related to its variable contracts through a variety of methods, including through mail sent to the Post Office or Nationwide's headquarters either by First Class or Priority Mail, electronic orders, telephone requests, and facsimile.

21. Beginning in 1995, Nationwide arranged to receive a variety of customer mail related to its variable contracts and other insurance products through PO Boxes at the Post Office located in Columbus, Ohio. By 2011, Nationwide was leasing at least 46 different PO Boxes at that facility. Through agreements with the Post Office, Nationwide bore the responsibility to retrieve the PO Box mail from the Post Office.

22. Nationwide used its multiple PO Boxes to segregate different types of mail from its customers. By as early as 1:00 a.m. each day, the Post Office received the mail for the current day's delivery and began processing the mail throughout the morning. The Post Office divided the mail into multiple PO Boxes, each of which was assigned to a different Nationwide business unit or product. At Nationwide's request, the Post Office further divided the mail into two groups: PO Box mail directed to Nationwide Financial businesses, which included Nationwide's variable products business ("Variable Contract Mail"), and mail directed to other Nationwide business units ("Other Mail").

23. Each day, the Variable Contract Mail contained, among other things, orders related to Nationwide's variable annuity and variable life insurance contracts subject to Rule 22c-1(a).

24. By 3:00 a.m. each day, the Post Office began placing the divided Variable Contract Mail and Other Mail in separate areas of the Post Office loading dock. This mail accumulated on the loading dock throughout the morning until the processing was completed, which was usually no later than 10:00 a.m. each day.

25. For most of the period, Nationwide hired a private courier to collect and deliver to Nationwide's Home Office the PO Box mail. By having the Post Office separate the Variable Contract Mail from the Other Mail, Nationwide was able to control the precise time that the orders related to its variable contracts were delivered to Nationwide's Home Office.

26. Nationwide instructed its courier to travel to the Post Office at 3:00 a.m., 5:00 a.m. and 7:00 a.m. each business day to retrieve the Other Mail, and specifically instructed the courier not to retrieve the Variable Contract Mail at these times.

27. In addition, Nationwide instructed its courier to travel to the Post Office at 10:00 a.m. each business day to retrieve Priority Mail. This Priority Mail included the same types of orders contained in the Variable Contract Mail except they were mailed differently, such that Priority Mail services generated a record of when a particular piece of mail was delivered to the addressee. Therefore, an investor could verify the Priority Mail's time of delivery to Nationwide's PO Boxes while an investor who used regular First Class mail could not. The courier typically delivered the trackable Priority Mail to Nationwide's Home Office by 11:00 a.m. Nationwide specifically instructed the courier not to retrieve the untrackable Variable Contract Mail when the courier came to retrieve the Priority Mail.

28. With respect to the Variable Contract Mail, Nationwide initially instructed its courier to travel to the Post Office after 4:00 p.m. each business day to retrieve it; and then, after approximately December 2006, to travel to the Post Office after 3:00 p.m. each business day to retrieve it, and deliver it after 4:00 p.m. that business day.

29. On occasion, Nationwide employees complained to members of the Post Office staff when portions of the Variable Contract Mail were inadvertently mixed together with the Other Mail and were therefore delivered to Nationwide before 4:00 p.m.

30. After one such incident, Nationwide requested a meeting with the Post Office, and stressed that it needed "late delivery" of Variable Contract Mail "due to regulations that require Nationwide to process any mail received by 4:00 p.m. the same day."

31. Nationwide also reminded the courier not to deliver the Variable Contract Mail to Nationwide's building before 4:01 p.m. Nationwide informed the courier that it deemed the Variable Contract Mail received when it arrived "in the building." Therefore, Nationwide directed that, even if the courier were to arrive in Nationwide's parking lot before 4:00 p.m., he must wait until 4:01 p.m. before entering the building with the Variable Contract Mail.

32. As a result, some couriers intentionally delayed their arrival time at Nationwide by stopping to purchase meals or fuel.

33. After taking those steps to ensure that delivery of orders contained in the Variable Contract Mail occurred after 4:00 p.m., Nationwide marked the variable contract orders with a post-4:00 p.m. time stamp. Nationwide then processed the orders for pricing at the next day's AUV and transmitted the orders to the underlying mutual funds for pricing at the next day's NAV.

34. By contrast, orders received through Priority Mail were promptly retrieved by the courier and processed by Nationwide before 4:00 p.m. for pricing at the current day's price.

35. Nationwide's intentional delay of the retrieval and delivery of orders contained in the Variable Contract Mail to its Home Office, as described in this Order, did not alter Nationwide's obligation to process the orders using the current day's AUV and to transmit orders to the underlying mutual funds for processing using the current day's NAV. By processing these orders, which were received before 4:00 p.m., using the next day's price, Nationwide violated Rule 22c-1.

Violations

36. As a result of the conduct described above, Nationwide willfully[2] violated Rule 22c-1 promulgated under Section 22(c) of the Investment Company Act. Rule 22c-1(a) requires investment companies, their principal underwriters, dealers, and any person designated in the fund's prospectus as authorized to consummate transactions in the fund's securities, to sell and redeem fund shares at a price based on the NAV next computed after receipt of an order to purchase or redeem.

Nationwide's Remedial Efforts

37. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nationwide's Offer.

Accordingly, pursuant to Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Nationwide cease and desist from committing or causing any violations and any future violations of Rule 22c-1 under the Investment Company Act.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $8,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

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[2] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Nationwide as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to G. Jeffrey Boujoukos, Associate Regional Director, Securities and Exchange Commission, Philadelphia Regional Office, 1617 JFK Boulevard, Suite 520, Philadelphia PA 19103.

By the Commission.

Brent J. Fields
Secretary