NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of :

NATIONWIDE LIFE INSURANCE COMPANY :

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CONSENT ORDER

The New York State Department of Financial Services (the "Department" or "DFS") and Nationwide Life Insurance Company ("Nationwide" or the "Company") are willing to resolve the matters described herein without further proceedings.

WHEREAS, the Department identified a practice arising from the replacement of deferred annuity contracts with immediate income annuity contracts, in violation of the disclosure and suitability requirements of New York Regulations 60 and 187;

WHEREAS, the Department commenced an investigation ("Investigation"), including Nationwide, in connection with the practice described in the preceding paragraph, for the period of January 1, 2011, through December 31, 2018 (the "Relevant Period");

WHEREAS, the Department found that Nationwide (1) failed to obtain appropriate annuitization information for replaced deferred annuities, (2) failed to disclose adequate suitability and annuitization information to contract holders, and (3) thereby prevented contract holders from being fully informed in deciding whether to replace deferred annuities;

WHEREAS, the Department found that Nationwide issued replacement immediate annuity contracts to consumers without sufficient Annuitization (as that term is defined below) information to determine suitability;

WHEREAS, the Department found that Nationwide (1) failed to adequately train agents and brokers to conduct proper suitability reviews, (2) failed to adequately train agents and brokers to provide disclosures to contract holders when replacing their deferred annuities with Nationwide's immediate annuities, and (3) failed to maintain adequate supervisory controls over its agents and brokers to ensure compliance with applicable regulations;

WHEREAS, the Department found Nationwide's conduct and failures to disclose to consumers that they could annuitize their existing deferred annuities with higher guaranteed income harmed certain consumers, causing them to exchange more financially favorable deferred annuities with immediate annuities; and

WHEREAS, Nationwide has agreed to revise its Disclosure Statement (as that term is defined below) and work with the Department's Life Bureau to revise its procedures after the Department identified these improper practices.

NOW, THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under the New York Insurance Law, the Department finds as follows:

<u>THE DEPARTMENT'S FINDINGS</u>

<u>Respondent</u>

1. Nationwide is a wholly owned subsidiary of Nationwide Financial Services Inc., an Ohio intermediate holding Company, which, in turn, is a wholly owned subsidiary of

Nationwide Mutual Insurance Company, a mutual insurance company incorporated in the State of Ohio.

2. Nationwide is authorized to write life insurance, annuities, and accident and health insurance, and is licensed to transact business in the District of Columbia and fifty states, including New York State.

3. Nationwide's principal products subject to the Department's investigation during the Relevant Period were fixed and variable annuities, including single premium deferred and immediate annuities, and flexible premium variable annuity contracts.

4. Career agents, independent broker-dealer firms, independent agents, and financial institutions market Nationwide's products.

5. Nationwide is headquartered in Columbus, Ohio.

Terms

6. For purposes of this Consent Order, the following terms shall have the meanings set forth herein:

a. "Annuitization" refers to the conversion of the actual accumulation amount of a deferred annuity into a series of annuity payments to the contract holder. Upon Annuitization, the annuity payments are calculated as the greater of the guaranteed annuity purchase rates in the contract applied to the actual accumulation amount or the company's current single premium immediate annuity rates applied pursuant to Insurance Law § 4223(a)(1)(E).

b. “Deferred annuity” refers to an annuity contract in which periodic income payments are not scheduled to commence during the first 13 months after the contract is issued.

c. “Disclosure Statement” means the form prescribed in Appendix 10B to Insurance Regulation 60, which, in connection with the issuance of a replacement annuity, requires accurate completion of certain disclosures and information, including but not limited to a side-by-side comparison of the deferred annuity and proposed replacement immediate annuity.

d. “Immediate annuity” refers to an annuity contract in which the first periodic income payment begins in 13 or fewer months after the contract is issued. The immediate annuity is usually purchased with a single premium.

e. “Replacement Contracts” refers to new single premium immediate annuities delivered or issued for delivery in the State of New York by Nationwide during the Relevant Period and which were known by Nationwide to include, as part of the resulting transactions, existing annuity contracts that have been or were likely to be lapsed, surrendered, partially surrendered, or otherwise terminated, as provided in Regulation 60, 11 NYCRR § 51.2(a).

<u>Factual Findings</u>

7. An annuity is a contract between a purchaser and an insurance company in which the purchaser agrees to make a lump sum payment or series of payments in return for regular payments, also known as annuity payments, that begin either immediately (within the first 13

months following purchase of the annuity) or, for a deferred annuity, at some future date. Annuity payments are designed to provide a steady stream of income for a specified period of time or for the remainder of one or more lives.

8. Replacement of existing deferred annuities with immediate annuities without disclosing annuitization income comparison information may cost consumers substantial lifetime income.

9. Nationwide's producers marketed to consumers Nationwide immediate annuities and replaced consumers' deferred annuities with immediate annuities during the Relevant Period.

10. In these efforts to sell the Replacement Contracts and replace the deferred annuities with immediate annuities, Nationwide's producers failed to provide to consumers required disclosures with annuitization income information, which would have revealed the detrimental nature of certain of these transactions.

11. Nationwide did not require or ensure that contract holders received for their review a comparison between the income benefit that contract holders would derive from their existing deferred annuity contracts and the income benefit available from Nationwide's proposed Replacement Contracts.

12. As a result, Nationwide did not satisfy its obligations regarding the suitability of the Replacement Contracts, as required by Regulation 187, 11 NYCRR § 224:

a. Nationwide failed to make reasonable efforts to obtain contract holders' complete suitability information, which would have included information about existing assets, such as the amount of guaranteed income available if the existing deferred annuity contracts were annuitized, prior to the recommendation of a Replacement Contract;

b. Nationwide failed to properly consider whether proposed Replacement Contracts were suitable for consumers in some instances, including whether the consumers would lose existing benefits available through annuitization options in the existing deferred annuities;

c. Nationwide issued Replacement Contracts to consumers without reasonable bases to believe the annuities at issue were suitable in some instances, and without providing consumers with the required Annuitization information for replaced deferred annuities;

d. Nationwide did not establish a supervisory system reasonably designed to achieve compliance with Regulation 187 with respect to the deferred to immediate replacements at issue; and

e. Nationwide failed to ensure that every producer recommending Nationwide's immediate annuities to consumers was adequately trained to make those recommendations with respect to the deferred to immediate replacements at issue.

13. The Department's investigation found that the Disclosure Statements provided by Nationwide to contract holders were inadequate because they failed to include information regarding the Annuitization of the existing deferred annuities, including periodic payment amounts available.

14. The Department's investigation also found that Nationwide's producers did not disclose to certain consumers the disadvantages of replacing their existing deferred annuities, including losing the opportunity to annuitize their deferred annuities, potentially on more advantageous terms than the proposed Replacement Contracts.

15. Due to these failures, certain consumers were uninformed regarding material disadvantages relating to the Replacement Contracts and were therefore prevented from making fully informed decisions with respect to the Replacement Contracts, resulting in less income for substantially similar or identical payout options.

16. Certain of the replaced deferred contracts also had more favorable guaranteed purchase rates, resulting in some contract holders receiving less retirement income from the Replacement Contracts.

17. When the Department brought its concerns regarding suitability and disclosure in replacement transactions to the attention of Nationwide, Nationwide agreed to work with the Department's Life Bureau to revise its Disclosure Statement.

Violations of Law and Regulations

18. Based on the foregoing, the Department finds that Nationwide violated New York Insurance Regulations 187 and 60.

NOW, THEREFORE, to resolve this matter without further proceedings, the Department and the Company stipulate and agree to the following terms and conditions:

SETTLEMENT PROVISIONS

Monetary Penalty

19. No later than ten (10) days after the Effective Date of this Consent Order, the Company shall pay a civil monetary penalty pursuant to Insurance Law § 109 to the Department in the amount of two million, two hundred forty thousand ($2,240,000.00) dollars. The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

20. The Company shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

21. The Company shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount from any other person or entity, including but not limited to, payment made pursuant to any insurance policy.

Injunctive Relief

22. Nationwide shall comply with Regulations 187 and 60. Going forward, Nationwide will obtain income information regarding replaced deferred annuities and replacement immediate annuities in all deferred-to-immediate replacement transactions and will disclose this information to consumers prior to the replacement recommendations.

Remediation and Restitution

23. Nationwide represents to the Department that it sold or issued 1,280 Replacement Contracts during the Relevant Period.

24. Nationwide has obtained necessary income information regarding the replaced deferred annuities and the Replacement Contracts and will disclose this information to impacted consumers to ensure compliance with Insurance Regulations 187 and 60.

25. Nationwide and the Department have agreed upon restitution and remediation for the affected contract holders of the Replacement Contracts. Nationwide will administer the payment and notice provisions discussed below in paragraphs 26-32 (the "Review and Restitution Process").

26. Nationwide has compared the income options and payment amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract.

27. Nationwide has submitted to the Department for its review and approval all annuity contract comparison information and a recommendation for each of the Replacement Contracts. The recommendations placed each Replacement Contract into one of three categories:

a. *Remediation*: contract holders of the Replaced Contracts shall receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities, and the contract holders are receiving less income from the Replacement Contracts than they would have received if their replaced deferred annuities were annuitized;

b. *No remediation*: contract holders of the Replaced Contracts will not receive restitution and remediation because the income options of the Replacement Contracts are substantially the same as the replaced deferred annuities and the contract holders are receiving either the same or more income from the Replacement Contracts; or

c. *Indeterminable*: the Replacement Contracts and the replaced deferred annuities are materially different in their income options and contract features, and the contracts cannot be readily compared.

28. Nationwide retained an independent third-party administrator ("TPA") to conduct the Review and Restitution Process. Nationwide and the Department agreed upon procedures used to evaluate the affected contracts. The TPA has compared the income options and payment

amounts available under each replaced deferred annuity contract with the income options and payment amounts of each Replacement Contract to determine whether restitution is appropriate. The TPA had discretionary authority in designating which Replacement Contracts were assigned to each remediation and restitution category. Nationwide shall be fully and solely responsible for all proper fees, expenses, and disbursements of the TPA in connection with the Review and Restitution Process provided for in this Consent Order and the TPA's retainer agreement.

29. The TPA has determined which Replacement Contracts warrant restitution and remedies, and the Department and Nationwide have agreed on the type and amount of restitution and remedies for affected contract holders:

a. *Remediation*: for contract holders whose Replacement Contracts pay less than they would have received through the Annuitization of their replaced deferred annuities under the same or substantially similar payout options, Nationwide shall determine the amount the contract holder would have received if, from the time of replacement to the Effective Date of this Consent Order, the contract holder had annuitized the replaced policy. Nationwide will include in this amount the applicable interest agreed to by the Department and Nationwide. Nationwide will issue a notice, subject to DFS's approval, that will accompany checks for the amounts owed to contract holders in this category that explains why contract holders are receiving the checks including, at a minimum, the comparison of income options and payment amounts between the replaced deferred annuities and the Replacement Contracts. Lastly, Nationwide shall determine the monthly (or other frequency) difference between the payments from

Replacement Contracts and the replaced deferred annuities, an amount that will be added to each such contract holder's monthly (or other frequency) annuity payments within 45 days of the Effective Date of this Consent Order or the immediate next payment following the calculation date approved by the Department for any restitution amount if later and stated clearly on that notice.

b. *Indeterminable*: Where the Replacement Contracts and the replaced deferred annuities cannot be readily compared due to materially different payout options and contract features, Nationwide will issue notices, subject to DFS's approval, that explain the differences in income options and payout amounts between the replaced deferred annuities and the Replacement Contracts, which may result in payment of appropriate amounts to these contract holders in the future. To the extent agreed upon by the Department and Nationwide, such notices may also include checks for any amounts designated for contract holders in this category.

30. In accordance with paragraph 29, Nationwide shall, within 45 days or other time period approved by DFS, deposit in the facilities of the U.S. Post Office, for delivery by prepaid first-class mail to all affected contract holders or their beneficiaries, notices and checks, or other payment means approved by the Department, in the required amounts. All checks must be valid for six months.

31. For any payment or notice to a contract holder or beneficiary that is returned as undeliverable or not deposited within six months, Nationwide shall conduct a reasonable search

for a current address. Should the search show a more current address, Nationwide shall re-issue a check valid for six months in the amount of the returned or undeposited check, and/or resend the notice to the current address within 15 days.

32. If a contract holder or beneficiary did not cash his or her check before the expiration date of the check or the check was returned after Nationwide resent it as described in paragraph 31, Nationwide shall follow all applicable provisions of the New York State Abandoned Property Law, including all reporting, mailing, and remittance requirements.

33. Upon 60 days following completion of the process described in paragraphs 30-32, Nationwide will provide to the Department quarterly reports detailing the number of checks mailed, the total amount of individual checks, and the number of checks deposited, undelivered, and/or not deposited. Once the parties determine any remaining undelivered or outstanding checks on the quarterly report are unlikely to result in activity prior to the conclusion of the dormancy period as defined by all applicable provisions of the New York State Abandoned Property Law, the quarterly report can discontinue.

<u>Full and Complete Cooperation</u>

34. The Company commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

<u>Further Action by the Department</u>

35. Upon execution by the parties to this Consent Order, the Department will discontinue the Investigation against Nationwide with respect to identified Replacement Contracts. No further action will be taken by the Department against the Company or its successors with respect to the Replacement Contracts, for conduct detailed herein that was found to have violated the Insurance Law and Regulations or in connection with the remediation set

forth in this Consent Order, provided that the Company fully complies with the terms of the Consent Order.

36. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Company for conduct or transactions that were not disclosed in written materials submitted to the Department in connection with this matter.

Waiver of Rights

37. The Company submits to the authority of the Superintendent to effectuate this Consent Order.

38. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside of the Department.

Parties Bound by the Consent Order

39. This Consent Order is binding on the Department and the Company, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

Breach of Consent Order

40. In the event that the Department believes the Company to be in material breach of the Consent Order, the Department will provide written notice to the Company of the breach, and the Company must, within ten (10) days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

41. The Company understands and agrees that its failure to make the required showing within the designated time period set forth in Paragraph 40 shall be presumptive evidence of the Company's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York State Insurance Law, Financial Services Law, or other applicable laws, and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

42. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Laura C. Sarli
Senior Assistant Deputy Superintendent for
Consumer Protection and Financial Enforcement
New York Department of Financial Services
One State Street
New York, New York 10004

For Nationwide:

Cheryl Davis
Associate Vice President, Corporate Compliance
One Nationwide Plaza, 1-35-206
Columbus, OH 43215

Miscellaneous

43. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

44. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

45. This Consent Order constitutes the entire agreement between the Department and the Company and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

46. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by the Company. To the extent that representations made by the Company are later found to be materially incomplete or inaccurate, this Consent Order is voidable by the Department in its sole discretion.

47. Each provision of this Consent Order shall remain effective and enforceable against the Company, its successors, and assigns, until stayed, modified, suspended, or terminated by the Department.

48. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

49. No promise, assurance, representation, warranty or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

50. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law.

51. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto and the Consent Order is So Ordered by the Superintendent of Financial Services or her designee (the "Effective Date").

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: /s
LAURA C. SARLI
Senior Assistant Deputy Superintendent for Consumer Protection and Financial Enforcement

May 18, 2022

By: /s
CHRISTOPHER B. MULVIHILL
Deputy Superintendent for Consumer Protection and Financial Enforcement

May 18, 2022

By: /s
KEVIN R. PUVALOWSKI
Acting Executive Deputy Superintendent for Consumer Protection and Financial Enforcement

May 18, 2022

NATIONWIDE LIFE INSURANCE COMPANY

By: /s
April VanDervort
VP, Individual Products and Solutions Operations

May 17, 2022

THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.

/s
ADRIENNE A. HARRIS
Superintendent of Financial Services

May 19, 2022