AEFC will pay the expenses of the Reorganization.

5. The Boards, including a majority of the Independent Directors, determined that participation in the Reorganization is in the best interests of each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered a number of factors, including: (a) The terms and conditions of the Reorganization; (b) the tax-free nature of the Reorganization; (c) the identical investment objectives, policies, and restrictions of the Acquired Funds and the Acquiring Funds; (d) that the shareholders of the Acquired Funds will be able to make future purchases of shares of the Acquiring Funds on a no-load basis; (e) that the expense ratio for each Acquiring Fund will be lower than the expense ratio of each Acquired Fund; and (f) the costs of the Reorganization will be borne by AEFC.

6. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of the Acquired Funds will have approved the Agreement; (b) the Funds will have received an opinion of tax counsel that the proposed Reorganization will be tax-free for the Funds and their shareholders; (c) applicants will have received from the Commission any exemption necessary to carry out the Reorganization; and (d) a registration statement on Form N–14 will have been filed with the Commission and declared effective for each of the Acquired Funds. The Agreement and the Reorganization may be terminated and abandoned by resolutions of the Boards at any time prior to the Closing Date. The Agreement may be terminated in the event that a material condition is not fulfilled, a material covenant is not fulfilled, or there is a material breach of the Agreement. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

7. A prospectus/proxy statement was filed with the Commission on March 13, 2000 and was mailed to the Acquired Funds shareholders the week of April 17, 2000. The shareholders of the Acquired Funds considered and approved the Agreement on May 9, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the other person; (b) any person 5% or more of whose securities are directly or indirectly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, considations, purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants state that they may not rely on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that AEFC or American Express Company owns more than 25% of the outstanding shares of each of the Acquired Funds and one of the Acquiring Funds and each of these Funds is an affiliated person of AEFC. AEFC is an affiliated person of the Funds because of its role as investment adviser to the Master Funds. Thus, each of the Acquired funds might be deemed to be an affiliated person of an affiliated person of an Acquiring Fund, other than by virtue of a common investment adviser.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exemption them from section 17(a) of the Act to the extent necessary to permit applicants to complete the proposed Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching and that the Funds have identical investment objectives and policies. Applicants also state that the Boards, including a majority of the Independent Directors, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state the Reorganization will be based on the Funds' relative net asset values.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14279 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24485; File 812–11666]

Nationwide Life Insurance Company, et al.

May 31, 2000.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an Order of Approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the ''1940 Act'').

Summary of the Applicant: Applicants seek an Order approving the proposed substitution of the American Century VP Balanced Portfolio (''VP Balanced''), a series fund of American Century Variable Portfolios, Inc. (''ACVP, Inc.''), for another fund of ACVP, Inc., the American Century VP Advantage Portfolio (''VP Advantage''), currently held in the separate accounts.

Applicants: Nationwide Life Insurance Company (''NWL'') and Nationwide Life and Annuity Insurance Company (''NWLAIC'') (collectively the ''Companies''); Nationwide Multi-Flex Variable Account, Nationwide VA Separate Account-A, Nationwide Variable Account-5, Nationwide VL Separate Account-A, Nationwide VLI Separate Account-3 (collectively the ''Separate Accounts''); and Nationwide Advisory Services, Inc. (NAS) (all collectively the ''Applicants'').

Filing Date: The application was filed on June 18, 1999, and was amended on March 30, 2000.

Hearing or Notification of Hearing: An Order granting the Application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 26, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES:

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609.
Applicants, Elizabeth A. Davin, Nationwide Life Insurance Company, One Nationwide Plaza, 1–35–10, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT:

Lorna MacLeod, Senior Attorney, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. NWL, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of Nationwide Financial Services, Inc. (''NFS''). NFS is ultimately controlled by Nationwide Mutual Insurance Company (95.24%) and Nationwide Mutual Fire Insurance Company (4.76%). NWL is the depositor and sponsor of the Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VLI Separate Account-3.

2. NWLAIC, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of NWL. NWLAIC is the depositor and sponsor of Nationwide VA Separate Account-A and Nationwide VL Separate Account-A.

3. Each of the Separate Accounts is registered under the 1940 Act as a unit investment trust (File Nos. 811–3338, 811–8692, 811–6140, 811–5606 and 811–6137). Nationwide Multi-Flex Variable Account, Nationwide Variable Account-5 and Nationwide VA Separate Account-A issue flexible premium variable annuity contracts that are registered under the Securities Act of 1933 (the ''1933 Act'') on Form N–4 (File Nos. 2–75174, 33–71440 and 33–22940). Nationwide VL Separate Account-3 and Nationwide VL Separate Account-A issue flexible premium and single premium variable life insurance contracts. Nationwide VL Separate Account-A also issues multiple payment variable life insurance contracts. The contracts issued by both separate accounts are registered under the 1933 Act on Form S–6 (File Nos. 33–44296, 33–44790, 33–44300, 33–44792 and 33–35775).

4. Each Separate Account maintains multiple sub-accounts each of which invests exclusively in the shares of a single portfolio that is a series of an open-end management investment company registered on Form N–1A. All Separate Accounts maintain sub-accounts that invest in shares of VP Advantage and VP Balanced. The two sub-accounts are included among the investment options available under all contracts issued by any of the Separate Accounts (the ''Contracts'').

5. The Contracts reserve to NWL and NWLAIC, as relevant, the right, subject to Commission approval, to substitute shares of another open-end management investment company for the shares of an open-end management investment company held by any sub-account. The reservation is disclosed in the prospectus for the Contracts.

6. Although the Contracts reserve to Nationwide the right to restrict transfer privileges, Contract Owners currently may make transfers among the sub-accounts once per business day without the imposition of any transfer charge. The substitution will not count as a transfer among the sub-accounts for the purpose of the daily transfer limit.

7. Within 45 days of receiving the Order of Approval requested by the application, Applicants propose to substitute shares of VP Balanced for shares of VP Advantage. On the date that the substitution is effected (the ''Exchange Date''), all shares held by the Separate Accounts in VP Advantage will be redeemed and, contemporaneously with the redemption, the Separate Accounts will purchase shares in VP Balanced. All shares will be purchased and redeemed at prices based on the current net asset values per share in a manner consistent with Rule 22c–1 under the 1940 Act.

8. The investment objective of VP Advantage is to seek long-term growth and current income. The fund achieves its objective by investing approximately 40% of its assets in equity securities, 40% in fixed income securities and the remaining 20% in cash and cash equivalents.

9. The investment objective of VP Balanced is to seek long-term growth and current income. The fund achieves its objectives by investing approximately 60% of its assets in equity securities and the remainder in bonds and other fixed income securities.

10. American Century Investment Management, Inc., the adviser VP Advantage and VP Balanced, has informed Applicants that its wishes to halt all management and operations associated with VP Advantage because the fund, since its inception on June 4, 1987, has not attracted sufficient assets to grow to an efficient size. Furthermore, because VP Advantage is not being actively marketed, it is not expected to attain economies of scale. American Century Investment Management, Inc. has informed Applicants that as of January 10, 2000, VP Advantage had assets totaling $21,832,751.26. As of the same date, VP Balanced had assets of $281,394,733.05.

11. The following table shows the average annual total returns for VP Advantage and VP Balanced for periods of one, three and five years and since inception as well as expense ratios for the funds for the year ended December 31, 1999.

	Management fees	Other expenses	Average annual total returns (performance)[1]			
			1 year	3 year	5 year	Since inception
VP Advantage (in percent)(inception: 8/1/91)	1.00	0.00	14.5	12.3	12.0	9.4
VP Balanced[2] (in percent) (inception: 5/1/91)	0.99	0.00	11.4	12.4	13.3	10.8

[1] Performance as of September 30, 1999.
[2] With expense reimbursement, the management fees and other expenses were 0.97% and 0.00% respectively.

12. On September 27, 1999, Nationwide supplemented the separate account prospectuses informing all existing and prospective Contract Owners that it is the process of applying for approval from the Commission to effect a substitution of VP Balanced for VP Advantage. In addition, the prospectus supplements state that Nationwide will not exercise any right reserved by it under the Contracts to impose an restriction or fee on transfers until at least 30 days after the proposed substitutions.

13. All Contract Owners have received a copy of the prospectus for VP Balanced because the portfolio is currently offered as an investment option under all contracts issued through the Separate Accounts.

14. Following the establishment of the Exchange Date, Contract Owners with interests remaining VP Advantage will be advised that the fund will be replaced on the Exchanged Date and that they are free to make any allocation change changes among the available investment options in advance of the Exchange Date.

15. Within five days of the Exchange Date, all Contract Owners affected by the substitution will receive a written confirmation of the substitution. The confirmation will state that Contract Owners may transfer all cash value in the affected sub-account to any other available sub-account(s). The confirmation will reiterate that Nationwide will not exercise any right reserved by it under the Contracts to impose any restriction or fee on transfers until at least 30 days after the proposed substitution.

16. The proposed substitution will take place at relative net asset value with no increase or decrease in the amount of any Contract Owner's policy value. The substitution will not result in any additional fees for Contract Owners nor will current charges increased. Contract Owners will not bear any added cost or expense, including any additional brokerage costs or expenses, associated with the proposed substitution. None of the contractual obligations currently assumed by Nationwide will in any way be abridged or modified as a result of the substitution. The proposed substitution will in no way alter a Contract Owner's right to surrender the contract at any time prior to or after the substitution in accordance with the terms of the contract. Finally, the substitution should in no way affect whatever tax benefits Contract Owners currently enjoy and will not engender any adverse tax consequences.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substitution of the securities held by the trust. The section further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants assert that the proposed substitution meets the standards that the Commission has applied to past substitutions.

3. Applicants assert that the investment objectives and policies of VP Advantage and VP Balanced are sufficiently comparable that the investment strategies currently employed by Contract Owners may be maintained after the substitution. Both funds seek to provide investors with the benefits of a balanced portfolio of fixed income and equity securities that serves as a more conservative alternative to traditional growth funds and as a more aggressive alternative to traditional bond funds.

4. Applicants further assert that Contract Owners will benefit from the proposed substitution because VP Balanced has greater assets than VP Advantage. Accordingly, VP Balanced should continue to have lower expenses as a percentage of net asset than does VP Advantage, creating the opportunity for better performance.

Conclusion

Applicants assert, for the reasons stated above, that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and the requested order approving the substitution should be granted.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–14247 Filed 6–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42849; File No. SR–OPRA–00–05]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 26, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 18, 2000, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would modify the current temporary capacity allocation plan for peak usage periods, which minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation (''SIAC'')) aggregate message handling capacity. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment and to grant accelerated approval to the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

OPRA proposes to modify the most recent amendment allocating the message handling capacity of its processor among the participant exchanges.[3] This modification will

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the International Securities Exchange (''ISE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] The current temporary allocation program is embodied in an amendment to the OPRA Plan proposed by OPRA and approved by the Commission. Securities Exchange Act Release No. 42779 (May 12, 2000), 65 FR 31950 (May 19, 2000) (order approving File No. SR–OPRA–00–04). As proposed by OPRA, that program was to expire by its terms on May 25, 2000. However, in its approval order the Commission modified the OPRA Plan